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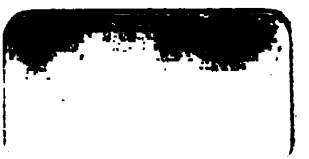

THE

FIRST BOOK OF THE LAW;

EXPLAINING

THE NATURE, SOURCES, BOOKS, AND PRACTICAL APPLICATIONS OF LEGAL SCIENCE,

AND

METHODS OF STUDY AND PRACTICE.

BY

JOEL PRENTISS BISHOP,

AUTHOR OF COMMENTARIES ON "THE CRIMINAL LAW," ON "THE LAW OF MARRIAGE AND DIVORCE," AND ON "CRIMINAL PROCEDURE."

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PREFACE.

THE following pages, down to the commencement of the chapter which contains the "Alphabetical List" of names and abbreviations, with notes attached thereto, were printed during the latter part of the last summer; other occupations having prevented the completion of the book till now.

The reader has, in this volume, the substance of what I have thought and learned on the most important subjects connected with our law and its study, during the years which have elapsed since I first directed my attention to them on entering a law office as a student. And frankness compels me to add, that, had this book been written by another for my use, and placed in my hands when I first resolved upon law studies, it would have saved me a great many months of hard mental labor, and given me an earlier standing than I obtained as a lawyer who had in some measure mastered the principles of his profession. I am sure also it will do this for others, if they will read it thoughtfully and carefully, with

minds open to receive such impressions of truth as it is adapted to make upon them.

Though this book is meant to be a "First Book" for students, and is written on the assumption that the reader has no previous legal knowledge, it does not presuppose him to be destitute either of natural capacity or preparatory training. Its object is, first, to enable all young persons to decide for themselves the question, whether the law offers to them the pursuit for life which is best adapted to their natural capacities and tastes; secondly, to teach all, who may choose to read it, something concerning the nature of the law, how it has come to us, what is legal authority, and so on, in order to qualify them the better to discharge the duties of citizens in a free republic; thirdly, and chiefly, to teach the student of the law how to study it, and to furnish him with various incidental helps in the study. It is not written upon the plan of teaching a little law upon every legal topic, therefore of necessity conveying to the mind of the young reader no really correct and perfected image of any thing; but its object is to prepare the way for a thorough and profound study of the law, viewed both as a science and an art, in other books.

I hope to number, also, among the readers of this book more or less of the lawyers who are now in practice. There is nothing I could write, more useful in my judgment to the profession at large, than is a

considerable part of what is said in the following pages. And I need not add, what is obvious on an inspection of the volume, that there are in it various things, particularly the alphabetical list of books, dates, and abbreviations, of a nature to be useful as a manual for constant consultation.

In illustrating some of my propositions, I have referred to a few of the many public questions of the legal sort, which have agitated the popular mind from time to time. There may be readers who will be displeased with some of these illustrations, as possibly favoring one political party more than another. If such a reader will be candid, however, he will see, that, while some of the views here given may appear to side in some degree with one of the political parties, others appear equally to side with the other; and none of them are the views of a party, but all are what the individual writer clearly discerns to be legal truth. I deemed these public references to be better adapted to enforce the larger propositions I wished to present than private ones would be; so, seeking for the best illustrations, I employed them.

Nearly simultaneously with this publication, a fourth edition of my "Commentaries on the Criminal Law" will appear. In that work, which is often read by the student, as I intended to adapt it to be, in advance of most of the other books in which he obtains his elementary knowledge, I gave, in the first two editions, a very few of the particular expositions to

which the following pages are devoted. But most things of this sort I was obliged to omit from the third and fourth editions, in consequence of the press of matter of the practical kind used by lawyers in the trial of causes. Some of those omitted things I have transferred to these pages. Still, as that book stands in this fourth and perfected edition, the reader will find in it, and in my "Commentaries on the Law of Criminal Procedure," in which also discussions of this nature occasionally occur, companions to the present volume, casting, I trust, some practical light on what here appears more in the abstract.

J. P. B.

Boston, May, 1868.

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BOOK I.

THE PREPARATION NECESSARY FOR LAW STUDIES.

CHAPTER I.

PHYSICAL CAPACITY.

§ 1. Mr. Warren, in his "Law Studies," urges, with great force, the necessity of the student's possessing physical health and strength, in order to enable him to study the law well, and to practise it successfully. And he deems that men require for this profession an amount of bodily vigor not indispensable in the other professions.[1]

§ 2. This view of Mr. Warren's is to a considerable extent true; but, that we may see more precisely how the matter is, let us expand and modify it a little. If a man is to practise law in the City of New York, and it is a part of his object to rise to a high social eminence and to make his fortune, let him be admonished in advance, that, unless he has a very robust

[1] Warren Law Studies, 2d ed., 62. I use, and refer to, the second edition in preparing this volume, because I think it better adapted to the purpose than the much altered, and considerably enlarged, third edition.

physical constitution, and no serious taint of hereditary disease, the race is one in which he will certainly fail, and a premature grave will close over a life of extreme anxiety and sorrow. Still supposing his fortune is yet to be acquired, the expense of living will be so great there, that it will require all the money which a feeble constitution will permit him to earn, even after he has gained the professional standing sought, to keep up the social position which he has determined to maintain.

§ 3. If, on the other hand, it contents a man of but little physical stamina to live in a very moderate and retired way, especially to live in a smaller place than New York, or in the country, and he has a mental aptitude for legal studies and practice, he may enter this profession, and he should do so rather than select another for which he is not thus adapted by nature; and, though he will not make as great a noise in the world, or accumulate as much money, as if he had physical health, he may pass his days respectably and pleasantly.

§ 4. Mr. Warren is perhaps right, in saying, that, especially, a man inclined to consumption should not select the department of court practice. The bar, he says, "requires signal strength" in the lungs. "The question, be it observed, is not whether the *voice* be strong, flexible, harmonious, — though this is a capital point, — but whether that on which the voice *depends* — the lungs — can be relied upon. The pipes of an organ may be capable of giving out tones of great power and exquisite richness, but what if the bellows beneath be crazy, and give way? Let us ask, then,

the student, whether there be any hereditary tendency to consumption in his family, of which any serious symptoms have been discovered in himself. Because, if so, coming to the *bar*, with a view to practise in court, is downright madness. Any honest and skilful medical man will tell him so. It is not the perpetual and often violent exercise of the voice alone: it is the excitement, the ceaseless wearing of the body and mind, that will kill him, as inevitably as it is encountered and persisted in."[1]

§ 5. But such a statement as this must have its qualifications. Each young gentleman who is deliberating whether to enter the legal field or some other, will take such medical advice as he chooses; and, if he is wise, he will settle the question more by considerations relating to his own special case than by general theories. In our own country, court practice, chamber practice, and attorney practice are, in general, very much mixed; and but very few lawyers spend their entire time in trying causes before juries, and arguing law questions before the judges. And this variety of pursuits is one of the means by which the health is preserved.

§ 6. It would be wandering from the main purpose of this volume, to enter into all the considerations coming logically within the present topic. As the reader goes on through these pages, he will get a glimpse of the nature of legal studies, and something of the nature of legal practice. And he must judge for himself, with such helps as he can command,

[1] Warren Law Studies, 2d ed. 65.

whether he is physically adequate to the work. But if he is quite frail, or is determined to lead a life of repose, he will not enter upon the law, which, properly pursued, draws heavier upon both body and mind than any other calling known among us.

CHAPTER II.

MENTAL APTITUDE.

§ 7. SINCE, it is presumed, the physicians will advise the student concerning his health, let us turn to the question of mental aptitude. Mr. Warren asks, "Why stick a verdant shoot into an ungenial soil?"[1] And he quotes old law authors, and plenty of Latin, to show that there may be even able intellects, not "verdant," as well as verdant ones, wholly unadapted to the law.

§ 8. Thus we have struck a great truth, which is becoming more and more apparent to mankind, as the world grows wiser and older. It is, that each varied space throughout the creation has, now or in future, to be filled with some corresponding created thing, differing from every other thing, as the space differs from every other space. All employments on our planet cannot be alike, hence all persons are not created alike. And he who finds his place, and fills it to the best of his capacity, discharges his full duty, and receives his full measure of reward; while he who takes the place meant for another, receives, in return for his error, a greater or less measure of disappointment and unhappiness, attending a greater or less failure in his plans of life. Not every one, for

[1] Warren Law Studies, 2d ed. 62.

example, was created to be a lawyer, and not every lawyer was formed to be an advocate or a judge. And the first and gravest question for a young man to put to himself, as he enters life, is, "For what sphere of action are these faculties, which I have received from God, adapted?"

§ 9. This question the student should revolve, and solve on the threshold, before he enters the temple of the law. He may, indeed, and should, read some law books before he decides the question; for it is impossible he should be able to determine whether his mind is adapted to a particular study and pursuit, until he knows something of the nature of the mental action required. And if these pages could reach the eyes of young men not contemplating the law, he would say to them: "Read some law books; they will serve as a useful part of your general education; and it may be, that, after all, you will see in them glimpses of more congenial grounds than you had before selected, over which your Creator meant you should walk." Thus, while these pages served to dissuade some from the law, they would serve also to allure others to it.

§ 10. There are no words, which it would be possible for an author to employ in such a connection as this, adequate to convey any just idea of the grave importance of the subject. Would any young man, simply because he had won the highest honors at his University, resolve to contest the realm of song with the Swedish Nightingale, and win money and applause by exhibiting himself thus before the public? But there is a genius for the law as much as there is for

vocal music, or for poetry, or for painting, or for sculpture, or for any thing else. A genius for this study is required, as much as for the study of the mathematics, or of intellectual philosophy, or for making inventions and taking out patent rights, or for gaining the ability to command an army, or to command great mercantile enterprises. The genius here, as elsewhere, is unavailing without mental toil; while here, as elsewhere, the mental toil will bring but a small and almost valueless return without the genius.

§ 11. But by genius is not meant merely a certain undefined inspiration. There is a conformity of mental structure to particular pursuits, as there is a conformity in physical substances to their physical uses. When the mental work and the mind which is to do it exactly fit each other, then we see the complete success which we attribute to well directed genius. And whether we suppose that the Power above, who controls our earth, comes down and by a breath named inspiration sanctions the obedience to the law of nature, which requires the instrument to fit the thing to be done with it; or whether we suppose the result to be a case of the ordinary response of nature, giving effect to what is done in conformity to her rules; the lesson to us is the same: it is that it is a perilous waste of strength for a young mind to engage itself for life to any thing to which it is not constitutionally adapted; while it is success secured in advance to devote itself to those labors which fit its powers.

§ 12. But how is a young man to know whether

nature has adapted him mentally to the study and practice of the law? He cannot know certainly and at once; for, in this instance, as in all others, if he would have knowledge, he must take the needful time and labor to acquire it. In this particular instance, the knowledge sought divides itself into two parts: first, he must know himself; secondly, he must acquire some general understanding of the nature of legal studies and practice. When both of these acquisitions are accomplished, he will find it not difficult to determine whether or not his mind, by its original conformation, fits the thing to be done. It is not the object of the present volume to teach the requisite self-knowledge; yet, on the other hand, its purpose is so to unfold those principles which lie around the outer margin of the law, constituting in some sense a hedge about it, and to afford such occasional glimpses of the inner field, as shall enable young persons, reading the book, and knowing themselves, to judge whether or not the nature which God has given them urges them to open the gate and enter the enclosure. As we go on, therefore, occasional suggestions will be made, to assist the reader in applying his self-knowledge to the solution of this question.

CHAPTER III.

MORAL APTITUDE.

§ 13. THE law is, to a great extent, a system of moral science. It looks continually to what is inherently right and just and expedient. It is not, however, a mere system of abstractions, but one rather of practical morality. Therefore the abstract rules are constantly limited and controlled by rules of a technical nature, adapting the abstract to the actual affairs of life, and making certain what would otherwise be left vague.

§ 14. It will give the student a glimpse of the inner workings of legal doctrine, and make plainer the principal teachings of the present chapter, if we pause here and see, by a few examples, how the abstract ethics and the legal technical rule fit each other. Turning to a book which has an established fame in the department of moral science, we read as follows: "The obligation to perform promises may be deduced from the necessity of such a conduct to the well-being, or the existence indeed, of human society. Men act from expectation. Expectation is in most cases determined by the assurances and engagements which we receive from others. If no dependence could be placed upon these assurances, it would be impossible to know what judgment to form

of many future events, or how to regulate our conduct with respect to them. Confidence, therefore, in promises is essential to the intercourse of human life; because, without it, the greatest part of our conduct would proceed from chance. But there could be no confidence in promises, if men were not obliged to perform them; the obligation, therefore, to perform promises is essential to the same ends, and in the same degree." And the writer goes on to show, that, with such exceptions as where the promise is unlawful or its performance becomes impossible, and the like, a man who by promise creates in another an expectation, is bound to perform what he thus caused the other to expect.[1]

§ 15. Now, in law, to make a promise binding so that it can be enforced by a suit, there must be added an element which the writers on ethics do not put in; namely, a consideration; unless we except what is called a promise by deed, about which it is not necessary here to speak.[2] A consideration, as it is termed in law, is something of a beneficial or valuable nature, passing from the promisee, or some one on his behalf (the promisee being the person to whom the promise is made), to the promisor (who is the person making the promise.)[3] The thing thus passing need not be money; a promise, for instance, is a sufficient consideration for a simultaneous promise made by the

[1] Paley Moral Philosophy, bk. 3, pt. 1, c. 5.

[2] Smith Cont. 87, et seq.; Broom Legal Maxims, 2d ed. 583.

[3] It is not proposed, in this volume, to undertake nice discussions of definitions. The definition of the term consideration is, by most writers, made more elaborate than in the form which I have employed in the text. See, for example, Smith Cont. 90.

other party; and there are various other kinds of consideration, which the courts support as sufficient.

§ 16. The reader will here perceive, that between the rule of law and the rule of morals there is no conflict; only the latter is broader than the former. The law does not require men to break those promises which are not founded on a consideration; while, on the other hand, it does require men to perform those which are. The broad rule of morals is here limited, in the law, by the narrower technical rule which requires a consideration.[1] And for such limitation we have reasons, deemed by most persons to be sufficient, some of which are the following: —

§ 17. In the first place the law, which is enforced by the courts, would be a very absurd thing if it undertook to cover the whole ground of morality. If every departure from the rule of ethics could be made the foundation for a law-suit, there would be no end to litigation; while, from most of the litigation, evil, and no good, would come. The law rests its foundations on morality, but it does not cover all morality; just as a man, who owns a lot of land, puts the foundations of his dwelling-house on the land, but he does not thus cover all the land.

§ 18. In the next place, in pursuance of the general doctrine of the last section, the law holds it not to be sufficient when a plaintiff comes into court, for him to show that the defendant is in the wrong; he must present, also, some legal merit in himself, or show why he, rather than another, is entitled to com-

[1] Parsons *v.* Thompson, 1 H. Bl. 322, 327.

plain. If a person, passing along the street, should see a second person beat a third, this first person could not sue the second because of the suffering of the latter. Hence, in cases of contract, supposing there is a consideration, "it must move from the plaintiff, that is to say, there must be a legal *privity* between the parties."[1] But suppose nothing moves from any body, there being no merit either in the plaintiff or any third person; the case now, as to the plaintiff, stands the same as though the consideration proceeded from another: he has no right to recover, however much the defendant may be in the wrong. And this is just the case of a mere gratuitous promise. The promisor commits a breach of the rule of morality in refusing to keep his word; but, since nothing passed from the promisee, or any one acting in his behalf, as a consideration for the promise, the latter has no standing in court to complain of the wrong-doing of the former.

§ 19. The case thus put is one in which the law enforces the rule of morals in part, but does not enforce the whole of the rule. In morals, however, the rule is sometimes uncertain; when the law, to prevent disputes, steps in and draws an exact line. Paley says: "Promises are not binding where the performance is impossible;" that is, where the performance becomes impossible by matter subsequent, or by matter not known to the promisor at the time of making the promise. His annotator, Whately, on the other hand, says: "This rule does *not* hold good,

[1] Broom Leg. Max. 2d ed. 592.

except when it is distinctly stated or fully understood by both parties, that the promise is to have this limitation; that is to say, where you prudently insert the condition of 'if possible,' or 'I will do my utmost.' But, without this, any one who makes an engagement is supposed to have fully considered all possibilities; and, if he fails, from whatever cause, he is held bound to make good the damage, or to suffer the blame and penalty of non-fulfilment."[1] Here it is the province of the law to draw a precise line, by means of what may perhaps be a technical rule. Yet, in the present instance, there appears not to be, in fact, a very well-settled rule of law. Professor Parsons says: "If performance of a contract becomes impossible by the act of God, that is, by a cause which could not possibly be attributed to the promisor, and this impossibility was not among the probable contingencies which a prudent man should have foreseen and provided for, it should seem that this would be a sufficient defence."[2] And he draws some further distinctions. To settle a doubtful question like this, however, is not the province of a work like the present; it belongs rather to a full treatise on the particular department of the law to which the question relates.

§ 20. There are numerous other lines which the law has drawn upon the groundwork which in ethics is called promise, and in law is called contract,[3] but

[1] Whately's Paley, Lond. ed. of 1859, p. 115, 123.

[2] 2 Parsons Cont. 5th ed. 672.

[3] Paley, rather queerly, makes a distinction between promise and contract, saying, "a contract is a mutual promise." But there is no

only one more will be mentioned here. Under the ancient common law, — that is, the law which comes to us from immemorial usage and judicial decision, in distinction from legislative enactment, — a promise, if it could be proved, was equally binding, in all cases, whether it was made orally, or made in writing not under seal; and so it is now, in law, as a general proposition; and so it is likewise, in all instances, in morals. But in the year 1676, in England, there was enacted Stat. 29 Car. 2, c. 3, entitled "An act for the Prevention of Frauds and Perjuries," and it is familiarly known as the statute of frauds. Its preamble declares its object to be the "prevention of many fraudulent practices, which are commonly endeavored to be upheld by perjury and subornation of perjury." Mr. Smith observes: "It is said to have been the joint production of Sir Matthew Hale, Lord Keeper Guilford, and Sir Leoline Jenkins, an eminent civilian. The great Lord Nottingham used to say of it '*that every line was worth a subsidy;*' and it might now be said, with truth, that every line has *cost* a subsidy, for it is universally admitted that no enactment of any legislature ever became the subject of so much litigation. Every line, and almost every word of it, has been the subject of anxious discussion, resulting from the circumstance that the matters which its provisions regulate are those which are of every-day occurrence in the course of our transactions with one another."[1] This statute, while its policy has been

proper foundation for this distinction: it certainly does not exist in the law; though, in the law, a mutual promise is one form of contract.

[1] Smith Cont. 38.

doubted by some, has, on the whole, been received with so much favor that its provisions have not only been continued in England; but, with occasional modifications, they have been adopted by legislation in probably every one of our own States.

§ 21. It is not proposed to enter minutely into a consideration of this statute; but its leading feature is to require certain matters of contract, which it specifies, to be set down in writing, in order to bind the contracting party. Its "chief object," observes Mr. Smith, "was to prevent the facility to frauds, and the temptation to perjury, held out by the enforcement of obligations depending for their evidence upon the unassisted memory of witnesses."[1] It was found, that, in certain classes of cases, witnesses were apt to remember inaccurately, or were tempted to commit perjury on account of the importance of the interests involved; and so the legislature stepped in, and provided, that, in these cases, if the one party to a contract wished to enforce against the other the obligation involved in the promise, he should see that the promise was put in writing. This was a mere technical rule, adopted by statute, to promote a great object of public policy. It merely restricted the courts, in their jurisdiction to enforce the rule of morals; but it did not undertake to interfere with the latter rule, or to alter it in any degree whatever.

§ 22. We see, therefore, that technical rules of the law, limiting or defining the rule of morals, may come to us either from the common law, or from legis-

[1] Smith Cont. 38.

lative enactment. While the last one mentioned is statutory, the others are rules of the common law, evidenced, not by the rolls where the statutes are recorded, but by the decisions of the courts, and the writings of eminent legal authors. But whatever be the origin of a technical rule of the law, it is merely a line drawn upon the pre-existing groundwork of moral science, which groundwork remains as before the rule was drawn upon it, a complete thing in itself, not torn or diminished in its proportions. And what is true of the law of contracts is true of every other department of the law.

§ 23. Now a person, to be adapted to the study of the law, and to its practice, must have such moral conformation of mind as will enable him to see the groundwork upon which the technical rules are drawn. This is what the author has termed "moral aptitude," in the heading of this chapter. But to see the lines which the law has drawn on this groundwork, he must also have the "mental aptitude," treated of in the last chapter. A deficiency of either is fatal to that mental combination which is capable of being developed by a legal education into a great lawyer. One destitute of the moral element may see the technical rules; but law, with these only, is like a corpse from which the spirit has fled. On the other hand, one who has the moral element without the intellectual, may discern the spirit of the law; yet he cannot see the earthly form which adapts it to the practical uses of life.

§ 24. This may be illustrated by two cases, which came, within the author's knowledge, before two dif-

ferent judges of inferior courts. In the one case, the judge was applied to for an order which he had the jurisdiction to make given him by statute, but the statute was silent upon the question of notice to the adverse party. Truly, however, the law required notice to be given; because the common law forbids any thing to be done against one who has no notice of the proceeding; and this rule of the common law is extended, by construction, to control a statute which says nothing about notice.[1] In the case in question, however, the judge did not recollect this rule of law; and, when applied to for an order of notice to the adverse party, as a preliminary to the hearing, he could not be prevailed on to give the order, but said he would grant the prayer at once, without any further ceremony! Had this judge possessed a large development of the moral element, his instinct would have taught him that such a course, whereby a man is stabbed in the dark without warning, was not right, and this prompting of instinct would have led him to look into the law. Thus he would have been kept from error. In the other case, a defendant, in the course of a term of court, had voluntarily withdrawn from the defence, and his withdrawal appeared of record. When the term closed, the judge made the usual general order for the clerk to enter up judgment in all cases of default, and the like. In this particular case, the clerk, who is but the ministerial officer of the judge, and acts under his direction, declined to make up the judgment in the form which

[1] 1 Bishop Crim. Law, 3d ed., § 189.

the plaintiff requested, without the judge's special direction. So, at the next term, the plaintiff applied to the judge for his special direction to the clerk. "But," said the judge, whose large moral nature was roused to look ahead of his intellect, "I cannot hear you unless you first take out an order of notice, and have the defendant summoned in." The counsel attempted to show the court that this course was not necessary, since the defendant had been once summoned in, and had voluntarily retired, himself declining to be present at any further proceedings. But the judge would not so much as permit the counsel to make in his presence this simple suggestion. The counsel approached the judge on another occasion, when he hoped the intellect would be up, and the moral part a little more quiescent; but it was of no use: the judge was not even to be reasoned with when he thought an absent party might possibly be made to suffer wrong; and so the counsel was driven to another course to accomplish the end sought. Had this judge possessed less of the moral, or more of the intellectual, in his nature, he would have decided correctly upon the application which he refused so much as to hear.

§ 25. Among writers who have done much to instruct the community is George Combe, not a lawyer. The following, from his published Lectures on Moral Philosophy, shows a strange want of harmony between his intellectual and moral nature, or a strange lack of instruction in one of so eminent general learning. After showing that marriage is enjoined by the law of nature, he proceeds: "Among

the duties incumbent on the human race in relation to marriage, one is, that the parties to it should not unite before a proper age. The civil law of Scotland allows females to marry at twelve, and males at fourteen; but the law of nature is widely different. The female frame does not, in general, arrive at its full vigor and perfection, in this climate, earlier than twenty-two, nor the male earlier than twenty-four to twenty-six. Before these ages maturity of physical strength and of mental vigor is not in general attained; and the individuals, with particular exceptions, are neither corporally nor mentally prepared to become parents, nor to discharge, with advantage, the duties of heads of a domestic establishment. . . . Children born of such young parents are inferior, in the size and qualities of their brains, to children born of the same parents when arrived at maturity. Such children, having inferior brains, are inferior in disposition and capacity. . . . The statement of the evidence and consequences of this law belongs to physiology; and I can only remark, that, if the Creator has prescribed ages, previous to which marriage is punished by him with evil consequences, we are bound to pay deference to his enactments; and that civil and ecclesiastical laws, when standing in opposition to his, are not only absurd, but mischievous. Conscience is misled by these erroneous human enactments; for a girl of fifteen has no idea that she sins, if her marriage be authorized by the law and the church."[1]

§ 26. The error into which this eminent writer has

[1] Combe Moral Philosophy, lect. 5, par. 67.

here fallen, is, that his indignation at the violation of what he deems to be a natural law has blinded him to the distinction between what the law absolutely approves, and what it does not take jurisdiction to interfere with one way or the other. Thus, if parties undertake to marry when too young to render it probable they can beget children, the law holds the marriage to be *voidable*, unless some other consequence comes from the express provision of a statute; but, if they marry after such age, it does not take upon itself to declare the offspring to be illegitimate, and punish them without a hearing, consequently it holds the marriage to be good. This is the general principle; but the student may trace it out in its exact line elsewhere.[1] In any case the law does not *approve* of the marriage; it merely, in some instances, keeps its fingers out of other people's messes. Thus, this same author, a little further on, says: "Another natural law in regard to marriage is, that the mental qualities and physical constitutions of the parties should be adapted to each other." Yet even he does not complain because the law declines to declare the marriage void, and the innocent children bastards, as often as it can find any want of mental or physical adaptation in the parties to each other. And if "a girl of fifteen" thinks she can violate any law of nature with impunity, the blame should not be taken all away from her parents and instructors, and placed upon the law of the land.

§ 27. These views show the importance of a good

[1] 1 Bishop Mar & Div. 4th ed. § 143 et seq.

development of the moral nature, and a proper harmony between it and the intellectual, as a qualification for the pursuit of law studies and of legal practice. A man with a contracted moral part may sometimes make a good physician, or even a good minister of the gospel; but he can never become a good lawyer. Sometimes one who practises immoralities is found endowed with a good capacity for the law; but such a man is always unhappy, for he must have a strong moral nature, and it remonstrates against his evil courses.[1] Lord Coke, in his very strong testimony, does not allow so much as this to a depraved moral nature. For he says: "Cast thine eye upon the sages of the law, that have been before thee, and never shalt thou find any that hath excelled in the knowledge of these laws, but hath sucked from the breasts of that divine knowledge, honesty, gravity, and integrity. . . . For hitherto I never saw any man of a loose and lawless life attain to any sound and perfect knowledge of the said laws; and, on the other side, I never saw any man of excellent judgment in these laws, but was withal honest, faithful, and virtuous."[2] The life of Coke himself, however, and of his great contemporary, Bacon, — two of the most eminent legal men who have ever lived, — shows, that, while both of these men had strong moral natures, neither of them was without serious departures from the strict line of rectitude.

[1] And see 1 Bishop Crim. Proced. § 1053–1066.

[2] 2 Co. Pref. Thomas ed. viii.

CHAPTER IV.

PREPARATORY STUDIES AND TRAINING.

§ 28. It is not deemed best to extend this volume into a general disquisition upon education and mental training. There is no system of education, esteemed by any considerate persons valuable, which may not in some aspect of it present advantages for him who intends to follow it up by law studies. Perhaps that which is least useful in an ordinary collegiate course, is Greek. Of modern languages, the French and the German are almost equally desirable; because there are many law books, of great importance, written in both these languages. Latin, among the dead languages, is almost indispensable.

§ 29. Then, of sciences, there is no end to those which may be useful to the practising lawyer. Among the mechanic arts, there is no one a knowledge of which — even a minute knowledge, extending into all the practical details — may not be of practical service. A legal gentleman once told the author, that he had gained a very important land case because he, when getting his education, had studied and practised surveying, as a means of support, while the lawyer on the other side, being born with a golden spoon in his mouth, had learned nothing except what he acquired at college, and afterward in the course of his legal studies and practice. And it is so

in every other form of litigation. A lawyer who understands the kind of business to which a law-suit relates, has an immense advantage over an opponent who does not.

§ 30. Suppose, for example, there is a contract about the building of a house, and the builder sues the other party who sets up in defence that the contract has not been fulfilled. A lawyer who understands the practical details of building stands, on the trial of such a cause, upon an eminence from which he can look down proudly upon the opposing counsel who knows nothing of the matter. If the builder is the client, and he is intelligent, he may "post up" his lawyer on the subject a little; but not so with the other party, who knows nothing of building.

§ 31. And what is true of this sort of cause is true of most others. In a patent-right case, the whole circle of the physical sciences may come into use. So we might even imagine a case in which a knowledge of the "Hebrew roots" would not be amiss.

§ 32. Likewise there is a general knowledge of the world which will serve a lawyer in his dealings with men, and especially with witnesses. A little of the rubbing which one gets, among the narrow straits, when he sets out on the sea of life, is of a very high importance to the young lawyer. Therefore it is often found that he who comes to the bar with less school knowledge and more knowledge of the world, has, in the practical contests of the profession, the advantage over him who has spent all his days in the schools.

§ 33. The kind of preparatory education, therefore,

if of any kind usually deemed useful among men, is of less consequence than the amount. But the education, to be available, should not be of the loose, hap-hazard sort; it should be accurate, accompanied by habits of close study and discriminating thought. There is no department in life wherein it is more important for one to think accurately, and know certainly what he knows, than the law. A rambling, careless mind, however strong the mind may be; or a loose thinker, however strong in thought; could not find a more unfitting or uncongenial place than a law office.

§ 34. Now, it is impossible for the student, before entering upon his law studies, to know every thing which it would be desirable he should know. If he has taken a course of ordinary collegiate education, he has had the *opportunity* to learn what should qualify him to enter upon law studies. Still, he may not have qualified himself, even then. He certainly has not learned all which it would be useful for him to know. And a man who has not taken this course of education, may have obtained its practical equivalent in some other way. But he who, with no sort of preparatory mental discipline and study, enters a law school or law office to read law, undertakes a most difficult work under great disadvantages, and the chances are, many to one, that he will fail.

§ 35. Other thoughts, relating to the educational preparation necessary, will occur to the reader as he peruses the following pages.

BOOK II.

THE NATURE OF LAW IN GENERAL, AND OF THE COMMON LAW IN PARTICULAR.

CHAPTER V.

THE DIFFERENT KINDS OF LAW.

§ 36. The word law is very broad in meaning. In its broadest sense it signifies, as the author has before had occasion to observe, "the order which pervades and constrains all existence;"[1] or, in another form of the expression, it is the order of the universe.[2] Now, this largest of the definitions of law includes, within itself, all the inferior definitions. The law of nature is the order which pervades and constrains all physical existence. The law of the human mind, which is taught in the system called mental philosophy, is the order which pervades and constrains the existence and action of the mind of man on our earth. And

[1] 1 Bishop Crim. Law, 3d ed. § 1.

[2] Hooker, in a celebrated passage, which has been placed by Mr. Bartlett in his book of "Familiar Quotations," p. 368, defines law thus: "Of law there can be no less acknowledged, than that her seat is the bosom of God, her voice the harmony of the world; all things in heaven and earth do her homage, the very least as feeling her care, and the greatest as not exempted from her power." Ecclesiastical Polity, b. 1.

the law of the land, as taught in what are termed law books, is the order which pervades and constrains our national and municipal associations.

§ 37. Thus we see what is the general definition of law, and some of the minor specific definitions falling within the general one. But the foregoing are not the only forms of words by which the like definitions might be expressed. Thus Blackstone says: "Law, in its most general and comprehensive sense, signifies a rule of action; and is applied indiscriminately to all kinds of action, whether animate or inanimate, rational or irrational. Thus we say, the laws of motion, of gravitation, of optics, of mechanics, as well as the laws of nature and of nations. And it is that rule of action which is prescribed by some superior, and which the inferior is bound to obey."[1] This definition, it is perceived, differs in no essential particular from our own, if we look at the essence of it, not at the mere form of words. Our definition, by employing the term "order," carries the mind to the consequences of obedience and of disobedience; while Blackstone's, by using the expression "prescribed by some superior," directs our thoughts to God, who is the fountain of order, and its impersonation. And the student, by looking at these two definitions, will see how one doctrine of our law of the land may be expressed, with equal correctness, by two dissimilar forms of words. And this should teach him the further lesson, that, in reading law books, he should always carry his understanding down below the sur-

[1] 1 Bl. Com. 38.

face of the words employed by his author, to the inner essence, and, if the expression may be used, the ethereal form, of the idea really meant to be described by the words.

§ 38. When we come to the law which is treated of in law books, we find that it is of many kinds. Thus, we have the law of nations; and this is usually divided by writers into two sorts, namely, the public law of nations, and the private law of nations. The latter is now more frequently spoken of under the term conflict of laws; though, perhaps, between the two expressions conflict of laws and private law of nations, some distinctions may properly be drawn. The law of nations, in its general sense, is the law which regulates nations in their intercourse with one another. There is no exact line which divides it from the laws which may be deemed local to particular countries; for, in truth, all law, from the law of the universe down through all its minor divisions, is one great whole, a coat without seam. But, for our convenience in treating of this vast harmony, we make in it an almost endless variety of somewhat technical divisions and distinctions.

§ 39. Then we have, of the law which governs our country within our territorial limits, many divisions more or less regarded in law books. There is the law of the written Constitution of the United States; and, in the respective States, there are the laws of the several State constitutions. There is likewise, everywhere with us, the distinction between statutory law, which comes from legislative enactment, and what is termed the unwritten law, the law which is not statu-

tory or constitutional. In one view, the unwritten law is really written; for it is, for the most part, set down in published decisions of courts, and in the law treatises of standard authors.

§ 40. This unwritten law, as it is called, is sometimes termed, in the broad sense, the common law.[1] But the expression, the common law, is more frequently used in a sense somewhat restricted; for it is not generally so employed as to include the law military or the law martial, — which are really laws of the land, applicable to certain persons, or in certain circumstances, as much as any other. It is often, however, employed to denote all the unwritten internal law of the land which is administered in the judicial tribunals. Still as often it has a sense more restricted; meaning only that part of the unwritten law which comes within the jurisdiction of what are termed the common-law courts, in distinction from the courts of equity, the courts of probate, and the like. Then, again, it is quite frequently employed in a sense yet more restricted; meaning so much of the unwritten law of England as is there administered in the common-law courts, not including those early English statutes which we receive as common law in this country.

§ 41. The law which is administered in the courts of admiralty is a mixture of the private and public law of nations with the municipal laws of the country, and it is not generally understood to be included in the term common law, though in some connections

[1] And see post, § 46, 48.

in which the term is used it may be. Thus we see, that, unfortunately for the precision of legal expression, the words common law have a great variety of meaning, to be determined by their relation to the other words near which they stand in a written or spoken sentence, and by the subject under discussion.

§ 42. These general views point to various divisions of law; and they will be made more specific as the reader proceeds through the remaining pages of this volume, and thence advances on in a course of law reading.

CHAPTER VI.

HOW OUR UNWRITTEN LAW HAS COME TO US.

§ 43. THE views stated in the last chapter suggest to us, that, in the nature of things, there can be no existence of any sort destitute of law.[1] If from any thing we separate all which may be termed the law of the thing, then the thing itself, so far as we can comprehend it, ceases to be. So there can be no society of mankind dwelling with man, unless there is also some law by which the association is regulated. If, for example, each individual should insist upon occupying one certain space, no greater than is sufficient to contain a single person, and should carry the determination into effect, the life of every one would be instantly ended. It must be, therefore, a law, that no two shall occupy, at the same time, one and the same space. And so we may trace the matter out, and discover other laws, without which the society cannot exist. And we shall see, that, if any one of these needful laws is violated, a penalty immediately and necessarily follows. Therefore there can be no law without its attendant penalty. The latter is inseparable from the former.

§ 44. Blackstone, we have seen,[2] speaks of law as a rule prescribed by a superior for the government of

[1] See the discussion in the first chapter of Bishop on the Criminal Law, vol. i.

[2] Ante, § 37.

an inferior. This is true when we consider God to be the superior; it is true also, in a certain sense, when we look upon the king or the state as the superior. But law must have existed in human society as soon as any such society came into being, and before there was time to organize what is now termed a state, or for one to usurp and enforce dominion over the rest. If we take the Scriptural account of the creation in a literal sense, and go further and suppose Adam to have been sovereign over Eve in the sense of a despotic prince, still there must have been a law regulating the association of these two persons before Adam had time to frame and proclaim any. In such a case, one such law must necessarily have been that from which Adam derived the authority to be law-maker over his companion.

§ 45. Thus we see, that law, as understood in works of legal science, had but one beginning, originating with man himself. The stream emerged from the same earth whence arose the first couple; flowed in even course with the race, augmented by human wisdom, and by human folly likewise; till, divided into as many parts as there are nations and tribes among men, it has come to us, bearing in its channels the accumulations of all past time.

§ 46. We have already seen something of one of the streams, called, with us, the common law.[1] But the words common law do not have just the meanings there mentioned in every place where the English language is spoken. Thus, Erskine, a writer of

[1] Ante, § 40, 41.

great authority upon the Scotch law, says: "When mention is made of the *common law*, in our statutes, the Roman is understood, either by itself or in conjunction with the canon law. When the expression is fuller, — *the common laws of the realm*, — our ancient usages are meant, whether derived from the Roman law, the feudal customs, or whatever other source."[1] And thus we see, that the unwritten law of Scotland is meant, in one sense or another, by the term common law when used there; and this is not the same as the unwritten law of England and the United States.

§ 47. It would serve no useful purpose to undertake to describe here all the systems of unwritten law which have prevailed in different countries. The most important and influential is the system known as the civil law, or the Roman civil law, which is the cumulation of the civilization of Rome down to the time when the empire was broken to pieces. It is from this fountain that the jurisprudence of modern Europe is mainly drawn. It has slightly augmented the common law of England; contributed the principal element in the civil, not the criminal,[2]

[1] Ersk. Inst., 1, 1, 28.

[2] Hume considers, that the civil department of the law attained a greater degree of perfection among the Romans than the criminal. And, speaking of Scotland, he says: "Accordingly, although our lawyers have been in the use of resorting to the Roman Code for a confirmation of their arguments in criminal matters; and though of old they even sometimes set it forth in the preamble of indictments as law (in like manner as they did the Canon and the Jewish laws); yet I cannot find that the imperial constitutions ever were incorporated into our municipal system, or were held to possess an authority farther than as some of them occasionally express a reasonable sentiment, with a brevity and an elegance which are fit to recommend it." 1 Hume Crim. Law, 2d ed. Introd. 16, 17.

law of Scotland; and, with our common law somewhat intermingling, has chiefly supplied the jurisprudence of our State of Louisiana.[1]

§ 48. The term civil law does not always refer to the jurisprudence of continental Europe, as thus mentioned; but it often means that branch of any legal system which concerns the private affairs of men, in distinction from the criminal law. The words common law, when used with us, unlike their use in Scotland,[2] refer, either more broadly or narrowly, as already described,[3] to the unwritten law which prevails here. Chancellor Kent defines: "The common law includes those principles, usages, and rules of action applicable to the government and security of person and property, which do not rest for their authority upon any express and positive declaration of the will of the legislature."[4] According to this definition, it is seen, the words common law signify, with us, both something more and something less than they do in England: more, because, as we shall by and by see, many of the early English statutes are common law in our country; less, because not all the principles of the English common law were adopted in the colonies, as being applicable to our altered situation and circumstances.

§ 49. With these explanations we are prepared to see, that, in England, a system of laws grew up, partly by immemorial usage, partly by decisions of courts, and partly by statutes and kingly decrees which were afterward worn out or forgotten, — the whole being

[1] Post, § 58 and note.
[2] Ante, § 46.
[3] Ante, § 40, 41.
[4] 1 Kent Com. 472.

termed, in one sense of the expression, the common law of England, — which, in conjunction with the acts of parliament, constituted the law of the kingdom. This law of the kingdom surrounded the English subjects at home and protected them; and, when they emigrated and established colonies in regions vacant of law, they took this law with them, so far as it was adapted to their new circumstances and relations.

§ 50. Thus we have seen, in general terms, that the law of England came over with our ancestors to the American colonies; and, becoming thus established here, it remained with us when we became independent States, and at this day constitutes the body of our common law. But it is necessary to trace in this connection the matter more exactly as it stands in legal authority, and to cite the books of authority wherein the subject will be found more fully illustrated and explained.

§ 51. When our ancestors came to the wilderness which constituted this country at the time of its settlement, they found no law here; for, supposing the Indians to have had law in the sense in which the word is understood among a civilized people, still the Indians retired when our ancestors came, so that the country must have been then regarded as uninhabited.[1] Therefore the established doctrine of our courts is, that our ancestors conveyed hither the entire body of the English law, as it was when they emigrated, only they did not need, and so did not bring, any laws which were inapplicable to their

[1] The State *v.* Buchanan, 5 Har. & J. 317, 356.

altered situation and circumstances.[1] They brought not merely the principles administered in the common-law courts, technically so called, but in all the other tribunals; as the equity, admiralty, and ecclesiastical.[2] It is evident, however, that many of the statutes, being of a local nature or unadapted to our circumstances,[3] and such principles of the common law as were found contrary to reason,[4] were excepted out of the mass of English laws brought hither by our ancestors; but general statutes, amendatory therefore of the common law, came; and they constitute a part of our common law.[5]

[1] Commonwealth *v.* Hunt, 4 Met. 111, 122; Van Ness *v.* Pacard, 2 Pet. 137, 144; The State *v.* Buchanan, 5 Har. & J. 317, 356; Wilford *v.* Grant, Kirby, 114, 117; Pawlet *v.* Clark, 9 Cranch, 292, 333; Wheaton *v.* Peters, 8 Pet. 591, 659; Martin *v.* Bigelow, 2 Aikens, 184, 187; The State *v.* Campbell, T. U. P. Charl. 166, 167; Straffin *v.* Newell, T. U. P. Charl. 172; Piatt *v.* Eads, 1 Blackf. 81, 82; Fuller *v.* The State, 1 Blackf. 63, 66; Dawson *v.* Shaver, 1 Blackf. 204, 206; Lindsley *v.* Coats, 1 Ohio, 243; Lyle *v.* Richards, 9 S. & R. 322, 330; Pierson *v.* The State, 12 Ala. 149; Stout *v.* Keyes, 2 Doug. Mich. 184; Abell *v.* Douglass, 4 Denio, 305; Commonwealth *v.* Holmes, 17 Mass. 336; Commonwealth *v.* Churchill, 2 Met. 118; White *v.* Fort, 3 Hawks, 251; Report of Judges, 3 Binn. 595; Simpson *v.* The State, 5 Yerg. 356; The State *v.* Rollins, 8 N. H. 550; The State *v.* Moore, 6 Fost. N.H. 448, 455; Norris *v.* Harris, 15 Cal. 226.

[2] 1 Bishop Mar. & Div. 4th ed. § 68; The Rapid, 8 Cranch, 155; United States *v.* Jones, 3 Wash. C. C. 209; Crump *v.* Morgan, 3 Ire. Ch. 91.

[3] Commonwealth *v.* Hunt, 4 Met. 111; Willard *v.* Dorr, 3 Mason, 91; Sessions *v.* Reynolds, 7 Sm. & M. 130; Hall *v.* Ashley, 9 Ohio, 96; People *v.* Sergeant, 8 Cow. 139; Morris *v.* Vanderen, 1 Dall. 64, 67; Respublica *v.* Mesca, 1 Dall. 73, 75; The State *v.* Campbell, T. U. P. Charl. 166; The State *v.* Briggs, 1 Aikens, 226, 229; Commonwealth *v.* Newell, 7 Mass. 245, 248; James *v.* Commonwealth, 12 S. & R. 220; Stoever *v.* Whitman, 6 Binn. 416; Updegraph *v.* Commonwealth, 11 S. & R. 394; Commonwealth *v.* Miller, 2 Ashm. 61, 63; Dunman *v.* Strother, 1 Texas, 89, 92; Brown's case, 3 Greenl. 177.

[4] Wilford *v.* Grant, Kirby, 114, 117.

[5] Commonwealth *v.* Chapman, 13 Met. 68; Bruce *v.* Wood, 1 Met.

§ 52. This treating as common law old acts of parliament is known, at least theoretically, in England; for in England the statutes passed before the time of legal memory, which is the beginning of the reign of Richard I., are esteemed *lex non scripta*, though copies of them be found.[1] The distinction there, however, seems unimportant when we learn that the earliest enactments in the printed collections are those of 9 Hen. III., more than thirty-five years later.[2] The Georgia court held, that we never adopt a part only of an English statute, and reject the rest;[3] but this view is opposed by what appears to be the better opinion of the Pennsylvania judges.[4] Indeed, the books contain numerous instances, not necessary to be here cited, in which the tribunals of different

542; Brinley *v.* Whiting, 5 Pick. 348, 353; Commonwealth *v.* Ruggles, 10 Mass. 391; Commonwealth *v.* Leach, 1 Mass. 59; Commonwealth *v.* Foster, 1 Mass. 488; Harding's case, 1 Greenl. 22; Stille *v.* Wood, Coxe, 162; Stevens *v.* Enders, 1 Green, N. J. 271, 273, 274; The State *v.* Scott, 1 Hawks, 24; Bryan *v.* Bradley, 16 Conn. 474; Patteson *v.* Winn, 5 Pet. 232, 241; Bains *v.* The Schooner, Bald. 544, 559; Commonwealth *v.* Knowlton, 2 Mass. 530, 535; Pearce *v.* Atwood, 13 Mass. 324, 354; Sackett *v.* Sackett, 8 Pick. 309; Colley *v.* Merrill, 6 Greenl. 50, 55; Winthrop *v.* Dockendorff, 3 Greenl. 156, 162; Boynton *v.* Rees, 9 Pick. 528, 532; Sibley *v.* Williams, 3 Gill & J. 52, 62; The State *v.* Mairs, Coxe, 335; The State *v.* Rollins, 8 N. H. 550; Commonwealth *v.* Warren, 6 Mass. 72, which compare with Respublica *v.* Powell, 1 Dall. 47; The State *v.* Campbell, T. U. P. Charl. 166; The State *v.* Malony, R. M. Charl. 84; The State *v.* Henderson, 2 Dev. & Bat. 543; Waterford and Whitehall Turnpike *v.* People, 9 Barb. 161, 166; The State *v.* Moore, 14 N. H. 451; The State *v.* Butler, Taylor, 262; Carter *v.* Balfour, 19 Ala. 814, 829; Swift *v.* Tousey, 5 Ind. 196; Shriver *v.* The State, 9 Gill & J. 1; Bogardus *v.* Trinity Church, 4 Paige, 178, 15 Wend. 111.

[1] Dwar. Stat. 2d ed. 1, 2. [2] Dwar. Stat. 2d ed. 21.

[3] The State *v.* Campbell, T. U. P. Charl. 166.

[4] Report of Judges, 3 Binn. 595, 601 et seq.; Updegraph *v.* Commonwealth, 11 S. & R. 394.

States have held a part of an English statute to be common law with us, while rejecting another part.

§ 53. An examination of the cases cited to the last two sections shows that sometimes the tribunals have taken but imperfect views of the doctrines therein explained. Still the general result, as stated, is now sufficiently established. We do not reject a settled rule because of doubts which enveloped it when first enunciated.

§ 54. Moreover we find on authority, that, besides the English statutory and common law, as before stated, the several States have, to some extent, local customs and usages, which have grown up with the earlier settlements, and incorporated themselves into the mass of their common law;[1] though, as observed by a learned judge, "we did not import from the mother country any of the special customs which, in particular localities, are allowed to supersede the common law."[2] So also in the colonial jurisprudence of some of the older States, a few of the English statutes, passed subsequently to their settlement, were adopted, and thus made of force by the general consent.[3] But unless so adopted, no such acts of parliament bound the colonies except by express words;[4]

[1] Commonwealth *v.* Chapman, 13 Met. 68; Clark *v.* Foxcroft, 6 Greenl. 296, 301; McConico *v.* Singleton, 2 Mill, 244; Broughton *v.* Singleton, 2 Nott & McCord, 338. But see The State *v.* Parker, 1 D. Chip. 298.

[2] Pearson, J., in Winder *v.* Blake, 4 Jones, N. C. 332, 336.

[3] Commonwealth *v.* Chapman, supra; Pemble *v.* Clifford, 2 McCord, 31; The State *v.* Rollins, 8 N. H. 550; Sibley *v.* Williams, 3 Gill & J. 52.

[4] Commonwealth *v.* Miller, 2 Ashm. 61, 63; Bull *v.* Loveland, 10

unless, perhaps, be excepted such acts as affect the king's prerogative.[1]

§ 55. Indeed, there is no reason why custom in this country should not in time grow into common law, the same as in England; for the common law of England is but custom, sanctioned by judicial decision. True indeed we may not be able to show immemorial usage, in precisely the English technical sense; but, because our country is recently settled, we may well claim modifications of the technical rule applicable to the establishment of a custom, so as to bring us within its meaning, when our circumstances exclude us from the letter. It has been laid down, however, that there can be no custom with us, the effect of which is to supersede the common law; but the court was speaking of custom strictly, which is confined to a particular locality, and not of prescription, which is a general custom made law by lapse of time and use.[2]

§ 56. We shall have a clearer view of some of the foregoing rules, if we consider at what times, within

Pick. 9, 13; Pemble *v.* Clifford, supra; Commonwealth *v.* Lodge, 2 Grat. 579, 580.

[1] McKineron *v.* Bliss, 31 Barb. 180, W. F. Allen, J., observing: "The general laws affecting the subject enacted by parliament, I am aware, do not extend to the colonies of Great Britain, unless they are specially named; but I do not understand that this is the rule in regard to those general statutes which relate to the king's prerogative, and his disposal of the crown lands or revenues. Those laws are to operate upon the sovereign and his acts, and are not to affect the subject; and hence the reason of the rule which exempts colonies from the effect of the ordinary legislation of parliament — to wit, that they are not represented — does not apply, and the rule itself should not exist."

[2] Winder *v.* Blake, 4 Jones, N. C., 332, 336. See, also, Knowles *v.* Dow, 2 Fost. N. H. 387.

the meaning of them, the colonies composing our older States were settled. The earliest English immigrants to this country, who remained permanently here, left their native land on the 19th of December, 1606, and established themselves at Jamestown, within the present State of Virginia, May 13, 1607.[1] James I. ascended the throne, March 24, 1603, and so this colony left England in the fourth, and arrived here in the fifth, year of his reign. Plymouth colony, which now forms a part of Massachusetts, was settled by the pilgrims who landed at Plymouth in December, 1620,[2] in 18 Jac. I. Massachusetts Bay, forming another part, was settled some eight years afterward[3] Lord Baltimore's colony left England for Maryland, November 22, 1633, and arrived there March 27, 1634,[4] in 10 Car. I. It has been judicially laid down, that Georgia was settled in 1722,[5] which is 6 Geo. II. While the dates at which some of the other colonies were settled may be readily ascertained in a way satisfactory to the historian, there are obvious difficulties in arriving at them to satisfy our present inquiry. Connecticut, for example, received its first immigrants from the Plymouth colony in 1633; the Dutch, who had come just before from Manhattan, having subsequently abandoned their position. Did these immigrants take to Connecticut the English law

[1] 1 Hildreth Hist. U. S. 100, 101; 1 Bancroft Hist. U. S. 123, 125.

[2] 1 Hildreth Hist. U. S. 160; 1 Bancroft Hist. U. S. 311, 313.

[3] 1 Hildreth Hist. U. S. 177.

[4] 1 Bancroft Hist. U. S. 245, 246; 1 Hildreth Hist. U. S. 209.

[5] The State *v.* Campbell, T. U. P. Charl. 166; Neal *v.* Farmer, 9 Ga. 555, 560.

as it stood when they left England for Plymouth in the new world, or as it had been modified in the Plymouth colony, or as it existed in England at the time of their arrival in Connecticut? Or shall we date the settlement of this colony, in respect of our present inquiry, from the commencement of the plantation at Wethersfield, by the servants of Sir Richard Saltonstall, in 1635, and trace through them the law directly back to England?[1] Or shall we deem that each township had its own common law, brought to it by its first inhabitants? To discuss these and all similar questions which may arise concerning each of the States of the American Union, would lead us further into historical researches and local jurisprudence than would be consistent with our present objects.

§ 57. We might suppose that questions like those mentioned in the last section embarrassed the early jurisprudence of the territories incorporated into States since the revolution. But the reported decisions disclose no difficulties of this kind; and only the general doctrine has been settled, that the common law is in force there.[2] This general doctrine is plain, as matter of principle, and, in principle, no statutory help is required to give it force. But the Ordinance of 1787, "for the Government of the Territory of the United States North West of the Ohio," contained a

[1] See Webster Hist. U. S. 94, 95.

[2] Stout v. Keyes, 2 Doug. Mich. 184; Fuller v. The State, 1 Blackf. 63; The State v. Cawood, 2 Stew. 360, 362; Wagner v. Bissell, 3 Iowa, 396; Lorman v. Benson, 8 Mich. 18. As to the transition from territories into States, see The State v. Wyman, 2 Chand. 5.

provision which was held to carry the common law into the States formed of such territory, so far as it might be found applicable there, even to the exclusion of any other pre-existing system of law; the provision being, that "the inhabitants of the said territory shall always be entitled to the writ of *habeas corpus*, and to the trial by jury; to a proportionate representation of the people in the legislature, and to judicial proceedings according to the course of the common law."[1] The early jurisprudence of Texas was of civil law origin, derived from Mexico; but the common law was afterward substituted by constitutional and statutory provisions.[2] In Louisiana, where also the civil law originally prevailed, the change has been made only to a limited degree.[3]

§ 58. Not only judicial decisions confirm the propositions before laid down, as to the introduction of the common law into this country, but, in most of the States, they are also declared either in the statutes or in the constitution itself. For example, in South Carolina the colonial legislature enunciated in general terms the same doctrines, and further provided that a large body of the acts of parliament, specifically named, should "be in as full force, power, and virtue as if the same had been especially enacted and made for the province, or as if the same had been made and enacted therein by any general assembly thereof." These acts of parliament included many which were

[1] Barlow *v.* Lambert, 28 Ala. 704; The State *v.* Cawood, supra; O'Ferrall *v.* Simplot, 4 Iowa, 381; Pollard *v.* Hagan, 3 How. U. S. 212.

[2] Const. Tex. Republic, art. 4, § 13; Hartley Dig. Laws, 120.

[3] Post, § 58, note.

passed subsequently to the colonial settlement, down to the year 1710.[1] In North Carolina, since January, 1838, all English statutes have ceased, by the Revised Statutes, to be of any effect;[2] and for a long time a similar provision has existed in New Jersey.[3] For further information of a local nature, the reader is referred to the notes, and to the authorities there cited.[4] The result is, that the common law forms at

[1] 2 S. C. Stats. at Large, 401 et seq., and editor's note, ib. 714.

[2] The State *v.* Huntly, 3 Ire. 418.

[3] Cruiser *v.* The State, 3 Harrison, 206.

[4] *Alabama.* The State *v.* Cawood, 2 Stew. 360; Pollard *v.* Hagan, 3 How. U. S. 212; Pierson *v.* The State, 12 Ala. 149; Carter *v.* Balfour, 19 Ala. 814, 829; Stokes *v.* Jones, 18 Ala. 734, 737; Barlow *v.* Lambert, 28 Ala. 704.

Arkansas. Same substantially as Illinois. Eng. Dig. Stats. 255. Arkansaw territory was "separated from Missouri in 1819, three years after the common law had been introduced by statute into that State." Du Ponceau Jurisd. 82. The common law was, at least partially, adopted in this State while it was a part of the territory of Louisiana, as far back as 1807. Grande *v.* Foy, Hemp. 105.

California. "The common law of England, so far as it is not repugnant to or inconsistent with the constitution of the United States, or the constitution or laws of the State of California, shall be the rule of decision in all the courts of this State." Stat. 1850, c. 95.

Connecticut. Wilford *v.* Grant, Kirby, 114, 117; Bryan *v.* Bradley, 16 Conn. 474; The State *v.* Danforth, 3 Conn. 112.

Florida. Thompson Dig. Laws, 21.

Georgia. Cobb New Dig. Laws, p. 721; Neal *v.* Farmer, 9 Ga. 555, 560; The State *v.* Campbell, T. U. P. Charl. 166; Straffin *v.* Newell, T. U. P. Charl. 172; The State *v.* Maloney, R. M. Charl. 84.

Illinois. "The common law of England, so far as the same is applicable and of a general nature, and all statutes or acts of the British Parliament made in aid of, and to supply the defects of, the common law, prior to the fourth year of James the First, excepting the second section of the sixth chapter of the forty-third Elizabeth, the eighth chapter of thirteenth Elizabeth, and ninth chapter of thirty-seventh Henry Eighth; and which are of a general nature and not local to that kingdom, shall be the rule of decision, and shall be considered as of full force, until repealed by legisla-

present the basis of the jurisprudence of every State except Louisiana.

tive authority." R. S. of 1845, c. 62, § 1, p. 337; Plumleigh *v.* Cook, 13 Ill. 669.

Indiana. Similar to Illinois. R. S. c. 91, § 1; Dawson *v.* Shaver, 1 Blackf. 204, 206; Guinn *v.* Hubbard, 3 Blackf. 14; Piatt *v.* Eads, 1 Blackf. 81, 82; Fuller *v.* The State, 1 Blackf. 63, 66; Swift *v.* Tousey, 5 Ind. 196.

Iowa. The ordinance of 1787, for the government of the northwest territory (see ante, § 57), made the common law the law of that country, and it was extended over Wisconsin, and then the laws of Wisconsin over Iowa; and, although the statutes of Michigan and Wisconsin were repealed in 1840, the ordinance of 1787 was not affected, but remained in full vigor as before. The 6th section of the act of July 30, 1840, may be considered as having prescribed the event of the union of the crown of England with that of Scotland, as the period at which the English statutes cease operating upon American law in Iowa. O'Ferrall *v.* Simplot, 4 Iowa, 381. And see Wagner *v.* Bissell, 3 Iowa, 396; Estes *v.* Carter, 10 Iowa, 400.

Kentucky. Gorham *v.* Luckett, 6 B. Monr. 638, 645, reporter's note; Wooldridge *v.* Lucas, 7 B. Monr. 49.

Louisiana. Originally the civil law of Spain as administered by the French who ceded this territory to the United States in the year 1803. The old jurisprudence has never been superseded by the common law, but has been greatly modified by it; and the result is "a system combining the excellences of the common and the civil law," of which the civil forms the basis. Du Ponceau Jurisd. 75–82. And see Parsons *v.* Bedford, 3 Pet. 433, 449.

Maine. Constitution, art. 10, § 3; R. S. c. 96, § 7; Rogers's case, 2 Greenl. 301; Towle *v.* Marrett, 3 Greenl. 22; Harding's case, 1 Greenl. 22; Colley *v.* Merrill, 6 Greenl. 50, 55; The State *v.* Smith, 32 Maine, 369.

Maryland. The State *v.* Buchanan, 5 Har. & J. 317; Darhill *v.* Attorney-General, 5 Har. & J. 392, 401; The State *v.* Bank of Md. 6 Gill & J. 205; Koones *v.* Maddox, 2 Har. & G. 106; Sibley *v.* Williams, 3 Gill & J. 52; Kendall *v.* United States, 12 Pet. 524; Shriver *v.* The State, 9 Gill & J. 1. The English statutes adopted in Maryland, and those not adopted, are stated in Kilty's Report of Statutes; a work of authority in that State, and of interest elsewhere. Copies of this work are said to be rare: it may be seen in the Suffolk Law Library, Boston.

Massachusetts. Commonwealth *v.* Chapman, 13 Met. 68; Common-

§ 59. In nearly all the States, the general doctrines before stated apply in criminal cases the same as in

wealth *v.* Churchill, 2 Met. 118; Going *v.* Emery, 16 Pick. 107, 115, 116; Commonwealth *v.* Leach, 1 Mass. 59; Sackett *v.* Sackett, 8 Pick. 309, 316, 317; Bull *v.* Loveland, 10 Pick. 9, 13; Bruce *v.* Wood, 1 Met. 542; Bartlet *v.* King, 12 Mass. 537; Boynton *v.* Rees, 9 Pick. 528; Commonwealth *v.* Knowlton, 2 Mass. 530; Pearce *v.* Atwood, 13 Mass. 324, 354; Commonwealth *v.* Hunt, 4 Met. 111; Commonwealth *v.* Warren, 6 Mass. 72; Brinley *v.* Whiting, 5 Pick. 348, 353.

Michigan. Stout *v.* Keyes, 2 Doug. Mich. 184; Rossiter *v.* Chester, 1 Doug. Mich. 154. "The territory of Michigan was, before the revolution, a part of the British province of Quebec, and governed by the French law in civil, and the common law in criminal, cases. Since it has become the property of the United States, the common law has been introduced into it, no matter by what means." Du Ponceau Jurisd. 74. And see ante, *Iowa.*

Mississippi. Noonan *v.* The State, 1 Sm. & M. 562; Byrd *v.* The State, 1 How. Missis. 163; Shaffer *v.* The State, 1 How. Missis. 238; Wheelock *v.* Cozzens, 6 How. Missis. 279; Sessions *v.* Reynolds, 7 Sm. & M. 130; Kelly *v.* The State, 3 Sm. & M. 518.

Missouri. Same substantially as Illinois. R. S. of 1845, c. 100, § 1. "During the first ten years of its territorial existence, that country was nominally subject to the Spanish law; but, as there were few or no lawyers among them who understood that system of jurisprudence, the common law gradually and almost insensibly superseded it; and, at last, by an act of the territorial legislature, passed on the 19th of January, 1816, it was proclaimed and established, and since has continued to be the law of the land." Du Ponceau Jurisd. 79. Upon the introduction, into this State, of the common law, in 1816, the Spanish law was abrogated; and relates only to contracts made prior to that time. Reaume *v.* Chambers, 22 Misso. 36.

New Hampshire. The State *v.* Rollins, 8 N. H. 550; Pawlet *v.* Clark, 9 Cranch, 292, 333; The State *v.* Burnham, 9 N. H. 34; The State *v.* Burnham, 15 N. H. 396; The State *v.* Moore, 14 N. H. 451; The State *v.* Bailey, 1 Fost. N. H. 343; The State *v.* Moore, 6 Fost. N. H. 448, 455.

New Jersey. Cruiser *v.* The State, 3 Harrison, 206; Patterson's Laws, 435; Stille *v.* Wood, Coxe, 162; Stevens *v.* Enders, 1 Green, N. J. 271, 273, 274.

New York. Constitution of 1846, art. 1, § 17; Waterford and Whitehall Turnpike *v.* People, 9 Barb. 161, 166; Canal Appraisers *v.* People, 17 Wend. 571; Bogardus *v.* Trinity Church, 4 Paige, 178, 198, 15 Wend.

civil; but there are a few States in which it is otherwise, either by the force of statutes or by the

111; Morgan *v.* King, 30 Barb. 9. And see the N. Y. cases cited, 1 Bishop Mar. & Div. 4th ed. § 71.

North Carolina. The State *v.* Huntley, 3 Ire. 418; The State *v.* Henderson, 2 Dev. & Bat. 543; The State *v.* Butler, 1 Taylor, 262; The State *v.* Pemberton, 2 Dev. 281; The State *v.* Hale, 2 Hawks, 582; The State *v.* Scott, 1 Hawks, 24; White *v.* Fort, 3 Hawks, 251; Bridges *v.* Smith, 2 Murph. 53; The State *v.* Seaborn, 4 Dev. 305.

Ohio. Key *v.* Vattier, 1 Ohio, 132; Vanvalkenburg *v.* The State, 11 Ohio, 404; Hall *v.* Ashby, 9 Ohio, 96; Betts *v.* Wise, 11 Ohio, 219, 221; Young *v.* The State, 6 Ohio, 435, 438; Universal Church *v.* Columbia, 6 Ohio, 445; Crawford *v.* Chapman, 17 Ohio, 449; Lindsley *v.* Coats, 1 Ohio, 243.

Pennsylvania. Dunlop's Laws, 3d ed. p. 122, 123, 235, 236; Report of Judges, 3 Binn. 595; James *v.* Commonwealth, 12 S. & R. 220; Lewer *v.* Commonwealth, 15 S. & R. 93, 96; Lyle *v.* Richards, 9 S. & R. 322, 330; Commonwealth *v.* Miller, 2 Ashm. 61, 63; Updegraph *v.* Commonwealth, 11 S. & R. 394; Morris *v.* Vanderen, 1 Dall. 64, 67; Respublica *v.* Chapman, 1 Dall. 53, 57; Respublica *v.* Mesca, 1 Dall. 73, 75; Allan *v.* Resor, 16 S. & R. 10, 13; and many other cases, for which see 2 Whart. Dig. 6th ed. 706.

South Carolina. 2 Stats. at Large, p. 401, 714; The State *v.* Findlay, 2 Bay, 418; The State *v.* Huntingdon, 1 Tread. 325; The State *v.* Counsil, Harper, 53; Pemble *v.* Clifford, 2 McCord, 31; The State *v.* Sutcliffe, 4 Strob. 372, 397; The State *v.* Speirin, 1 Brev. 119; The State *v.* Huntington, 3 Brev. 111.

Tennessee. Simpson *v.* The State, 5 Yerg. 356; Jacob *v.* The State, 3 Humph. 493, 514; Porter *v.* The State, Mart. & Yerg. 226; Crenshaw *v.* The State, Mart. & Yerg. 122.

Texas. Const. Repub. art. 4, § 13; 2 Hartley Dig. Laws, 120; Grinder *v.* The State, 2 Texas, 338; Chandler *v.* The State, 2 Texas, 305, 309; Dunman *v.* Strother, 1 Texas, 89, 92; McMullen *v.* Hodge, 5 Texas, 34.

Vermont. R. S. of 1839, c. 27, § 1; The State *v.* Parker, 1 D. Chip. 298; Nash *v.* Harrington, 2 Aikens, 9; Martin *v.* Bigelow, 2 Aikens, 184; The State *v.* Briggs, 1 Aikens, 226, 229.

Virginia. Code of 1849, c. 16, § 1; Dykes *v.* Woodhouse, 3 Rand. 287, 291; Commonwealth *v.* Lodge, 2 Grat. 579, 580; Commonwealth *v.* Posey, 4 Call, 109; Marks *v.* Morris, 4 Hen. & M. 463.

Wisconsin. Constitution, art. 14, § 13. And see ante, *Iowa.*

rulings of the courts.[1] It is a fancy not quite explainable that anybody should deem it less important to keep in force the common law in criminal cases than in civil, or deem that more injustice would be done to the wrongdoer in the one instance than in the other.

[1] 1 Bishop Crim. Law, 8d ed. § 86, 88.

CHAPTER VII.

THE LAW CONSIDERED AS A SYSTEM OF PRINCIPLES.

§ 60. BLACKSTONE, we have seen,[1] defines law to be "a *rule* of action." It is not, therefore, a set of haphazard and discordant directions for a corresponding number of individual and isolated cases; but it is "a rule," — something which works by system. If the Creator should stand over a stream of flowing water, and say, "Now flow up hill; now flow down hill; now rush at the rate of ten miles an hour along a level bed," — and the stream should, as it would, do all this, we should say it was no longer moving in obedience to law, though it was obeying the voice of God.

§ 61. And it is just so with those laws which govern men in society. They operate steadily, constantly, and uniformly; as does the law which draws the rivulet constantly and steadily down-stream, and never up, and down-stream with a rapidity proportioned to the steepness of the descent. And as a particular motion of the stream is not the law of the stream, but only evidence of the law; so the decision of a court in a particular case is not the law of the community respecting the matter to which the case

[1] Ante, § 37.

relates, but it is, as to the point involved, evidence of the law.

§ 62. The law of the land, therefore, consists of what are properly termed *principles;* though there are some other words, as *axiom*, *rule*, *proposition*, and the like, as well as *statute*, *constitutional provision*, and so on, which are often employed as signifying some minor part of what here is styled, in the largest sense of the word, a *principle*. Some readers may object to this very large sense into which the word *principle* is here expanded; but we have no other word which comes so near to conveying the idea which the author means. The use of it, in this large sense, is not absolutely objectionable; though, in practical language, if we wished to speak of a statutory provision, and nothing more, we should not call it a principle, because we should prefer to be more precise and select in the form of speech adopted.

§ 63. The expression "a principle of the law" differs from the single term "law," only as the words "a thread of cloth" differ from the word "cloth." When the threads, which we call principles, are woven together, they make up the complete legal texture. And as a thread alone is not woven cloth, so a single legal principle is not, alone, that garment of the law with which our civil society is clothed.

§ 64. It is not easy to define the term legal principle in a way to satisfy the inquiry of one who is wholly uninformed on legal subjects; because there is no equivalent expression which will be better comprehended by him than this one. Therefore, leaving the term to stand on the description already given,

let us call to mind a few examples of legal principles, and show how they operate in the law. But — some such examples were given in an earlier chapter:[1] thus, as we there saw, it is a principle of our law, that a promise, made orally or by simple writing, cannot be enforced in a court of law unless it is founded on what is termed a consideration, though it may be binding in morals.[2] And we also saw that a statutory principle, found in what is termed the statute of frauds, requires, in some cases of promise, the addition also of a writing, in order to enable the courts to enforce it.[3]

§ 65. Now, if A sues B, on a promise which the latter has made him, and no *consideration* appears, he cannot recover; for the *principle* of the law, which requires a consideration, stands in the way to prevent the recovery. So, if the case is one in which the statutory principle demands a writing, and the evidence shows only what is termed a parol promise, — that is, a promise by word of mouth, — there can be no recovery, although there is evidence establishing the consideration. If the law moved, like the stream supposed, up hill or down, this way or that, as the supreme power of the state prompted in the individual instances, — that is, if it were no longer law, — the fact that A was, or was not, permitted to recover of B, in a particular suit, would prove nothing respecting the next suit which should come after, either between the same or any other parties. But, because the law is a system of principles, if the prin-

[1] Ante, c. 3. [2] Ante, § 15–18. [3] Ante, § 20, 21.

ciple is established in one case, it guides the decision in any other case which may follow.

§ 66. Suppose, again, there is a written promise; but it is proved, also, that the promisee (being the person to whom the promise is made) got the promise by practising a fraud upon the person making the promise (called the promisor). This brings us to another *principle* of our law. It is one of common law, and it is variously expressed in the law books; but, for the purpose of the present illustration, it may be stated in the words of an old legal maxim taken from the civil law, *Ex dolo malo non oritur actio*, a right of action cannot arise out of fraud.[1] Says Mr. Broom: "It is a familiar principle that no valid contract can arise out of a fraud; and that any action brought upon a supposed contract, which is shown to have arisen from fraud, may be successfully resisted."[2] This further principle of the law, therefore, steps in and governs the present case; so that, if the promisee sues the promisor, he cannot recover.

§ 67. The principle last stated is, in our law, broader than the maxim quoted from the civil law would seem to indicate. Story, J., once stated the principle as follows: "The general rule is, that, whenever fraud intervenes in any act, contract, deed, conveyance, or other instrument, however solemn it is, it is, as to the party upon whom the fraud is perpetrated, or whom it is designed to injure, utterly void."[3] The consequence is, that, not only is a contract made void by reason of a fraud practised upon the party

[1] Broom Leg. Max. 2d ed. 571. [2] Broom Leg. Max. 2d ed. 573.
[3] Bottomley *v.* United States, 1 Story, 135, 147.

against whom it is attempted to be enforced, but any other instrument, or any other "act," which, but for the fraud, would have a legal effect, is, as against such party, a mere nullity, whenever relied upon in law.

§ 68. But, if two persons, as between themselves, are united in a fraud which they attempt to practise upon third persons, or upon the community, the principle stated does not render the act, as between themselves, null and void. And Story, J., follows up the statement of the doctrine, as just quoted from him, by drawing this outer limit of it, as follows: "If the fraud is concocted for the purpose of cheating third persons, it may bind the immediate parties to it, so as to estop them from setting up the original invalidity of the transaction. But, as to such third persons, the transaction, however solemn it may be, is utterly void; and it may be treated as a nullity, whenever it is asserted in opposition to their rights. But when the fraud is perpetrated by one of the parties to the transaction upon the other, there the transaction, be it what it may, — an act *in pais*, a deed, an authority, a conveyance, or any other instrument, — is utterly void. In contemplation of law, it never had any existence whatsoever. This is the general rule. It operates universally as between the parties themselves; although there may be exceptions to it in particular cases in favor of third persons, as, for example, in cases of negotiable instruments, bank-notes, and other currency, where reasons of public policy, and the interests of *bona fide* holders may require exceptions." And he illustrates one of the distinctions, thus drawn, in the following way: "In the

common case of a conveyance to defraud creditors, we all know that it is valid and obligatory between the parties; because the law will not tolerate the grantor in setting up his own turpitude to avoid his own solemn act. It leaves him to bear the burden of his own iniquity, and to submit to the loss of the property, of which he intended to cheat others, upon the known maxim, *In pari delicto melior est conditio possidentis.* As the party has made his own bed, so he must lie on it, however uneasy may be his posture. But, in relation to creditors, we all know, the same conveyance is treated as an utter nullity, and is not for a moment allowed to intercept their rights."[1]

§ 69. It must be obvious to the reader, that the principle whereby a fraud renders void in law any transaction as against the party attempted to be defrauded, is one having a wide application, and indeed running through every department of our legal system. But the principle of statutory law, already mentioned,[2] whereby certain contracts, to be valid, must be in writing, is one, which, in its terms, has but a limited application; namely, it is limited to the law of contracts, and to a certain particular part of this law itself. So the common law principle, which requires every contract to have a consideration,[3] while it runs through the entire law of simple contracts, extends, by its terms, no further. We see, therefore, that the scope of some principles is much more wide than the scope of others.

§ 70. These illustrations of the proposition, that

[1] Bottomley *v.* United States, 1 Story, 135, 147, 148.
[2] Ante, § 65. [3] Ante, § 20, 21, 65.

the law is a system of legal principles, might be extended indefinitely. Indeed, the entire law might be taught, simply by going on far enough with these illustrations. But the purpose of the writer, in this connection, is not so much to teach the law, as to explain to the student its nature.

CHAPTER VIII.

THE LAW CONSIDERED AS A SYSTEM OF REASON.

§ 71. THE discussion in the last chapter shows us, that, on the one hand, there are numerous principles of the law, while, on the other hand, each particular question of law depends upon its one or two, or a very few principles, which control and govern it. And it is thus made apparent to the reader, that, before the student becomes competent to advise a client upon any legal question, he must first understand the legal principles relating to such a matter as the one inquired about, and then he must be able to determine what one, or two, or more of the principles govern the particular question.

§ 72. This applying of the principles to the particular question is one of the chief functions of what is called legal reason; though, in another chapter, we shall see that another of the functions of legal reason is occupied with determining what are the principles. So great is the importance of applying the principles correctly, as well as of ascertaining what the principles are, that reason, whereby this is done, is often called the soul of the law. Lord Coke expresses the idea thus: "Reason is the life of the law, — nay, the common law itself is nothing else but reason; which is to be understood of an artificial perfection of rea-

son, gotten by long study, observation, and experience, and not of every man's natural reason."[1]

§ 73. In another view, however, the law is composed entirely of legal principles; because the question whether one or another of the ordinary principles of the law is to control a particular case, — in other words, which of the principles are to step aside and give way to which other of the principles, — is a question depending itself upon a principle of the law. Thus, for example, it is a legal principle that no child under seven years of age can commit a criminal offence; because, under that age, the child is conclusively presumed by the law not to be capable of entertaining the criminal intent. This is the common-law rule.[2] Now, it is competent for legislation, unless restrained by some constitutional provision, to change any rule or principle of the common law. Suppose, therefore, there is a legislative act, in broad terms declaring, that, if any person shall do such or such a thing, he shall be punished so and so. Here is a later legislative principle acting in connection with the common-law principle. And it is a principle of legal interpretation, that a statute does away with all opposing pre-existing law, statutory and common. Is, then, the child, under seven years, liable to be indicted and punished, if he commits the act forbidden by the statute? No; it is entirely plain to every lawyer conversant with this class of questions that he is not; though the principles, thus stated, seem to show that he is. And the reason is, that there is

[1] Co. Lit. 97 *b*. [2] 1 Bishop Crim. Law, 3d ed. § 461.

another principle, now about to be stated, which comes to the relief of the young child. It is, that, where there is a particular class of persons, exempt from the operation of any branch of the common law of the country, and then there is a statute augmenting this common law by a general provision, the provision does not apply to the particular exempt class. If it did, even the "natural" reason of man would cry out against it; for it plainly could not be presumed that the legislature meant to do so unreasonable a thing as to overturn an established principle of the law, by a statute plainly passed with another, and very different, distinct purpose in view.

§ 74. Thus we see what Lord Coke means when he declares the law to be "an artificial perfection of reason." It is a reason which takes cognizance of the legal principles; which, indeed, merely arranges and applies them; while the principles, like every thing else, are to be learned by study; and the skill to arrange and apply them is, like skill in all other things, to be acquired only by practice.

§ 75. When we say, therefore, that the law is a system of reason, in part technical and artificial, we say nothing which contradicts the other statement, that it is a system of legal principles. And that it is such a system, and that the one view of it is not diverse from the other view, is a truth which we should constantly bear in our minds. And this suggests to us, what we have already partly considered, that a person, to become a first-class lawyer, must possess, by natural gift, a large endowment of what is called the reasoning power. This power, as he studies and thinks, will be-

come both augmented in volume, and directed in the appropriate legal channel. Yet there are persons endowed with unusual reasoning powers, whose minds, even after long legal study and practice, seem not to have found the exact legal channel; showing, that it is not entirely the *quantity* of the reasoning faculty which constitutes what is called the *legal mind*, the particular *quality* also must be taken into the account.

§ 76. Mr. Warren, in his "Law Studies," recommends to the student the cultivation of his reasoning faculties; and, for this purpose, he vehemently urges upon him to procure and read Chillingworth's "Religion of Protestants a Safe Way to Salvation."[1] Is this process better than the study of Euclid? Neither Euclid nor Chillingworth indulges in the particular "artificial perfection of reason," which, Lord Coke tells us, constitutes the life of our law. Euclid has the "artificial perfection" which is recognized in the science of geometry; and Chillingworth, the "artificial perfection" which is supposed to be essential to the due defence of the English Protestant Church. The conclusion is, that, however important Euclid and Chillingworth may be in a course of general education, which may be preparatory to an education for the bar, the study of these and the like authors has no immediate connection with a legal education.

§ 77. But the suggestion may well admonish the student, that, in preparing himself for legal practice, he should not waste his time on wishy-washy law books, however accurate may be the law they contain,

[1] Warren Law Studies, 2d ed. 202, 218.

written by men to whom God had not given legal minds, destitute of true legal reasoning. A legal education does not consist merely in acquiring a knowledge of the law. There must be added to this that discipline of the mind which brings the faculties into what may be termed a legal shape, and places them within the ready control of the volition when it would direct them to a legal question. A person might, by the use of books and by other help, become able to tell, on looking at a piece of music, on what key of the piano to place his finger to sound each note, yet not be able to compete with the great masters in the art of swaying an assembly by his playing. And it is, to a considerable extent, the same in the law. The student should, besides seeing more or less of legal practice, and himself trying causes before justices of the peace and moot courts, read the writings of those authors, living and dead, whose works exhibit strength of legal intellect, and present legal reason in distinction from mere points of law.

§ 78. It is objected, by persons not skilled in legal questions, among whom are even included some men who have studied law and are engaged in legal practice, that such views as are presented in this chapter and the last represent the law to be more scientific in its nature than it really is. Now, this word scientific means, as uttered by some people, somewhat more than it means when uttered by others. As the author understands the language, the law is, in truth, a science; and, if it should cease to be so, it would cease to be law, and become something entirely different from what it is. But if we are to understand, by the

term scientific, something perfect in all its parts, and entirely harmonious in all its action, — something, therefore, which pertains, not to men, but to angels, — then the law is not a science. Viewed in this way it has great beauties, greater and more numerous than ignorant people will accord to it; but its home is on earth, it belongs to our imperfect state, and not to the perfection of heaven. Yet, like other imperfect things which dwell here below, it may be made better and better; and perhaps, in the progress of events in the unseen future, be made fit for a purer state of existence than our earth at present presents.

§ 79. If, then, the legal principles are sometimes variant from the abstract right, and are sometimes not in harmony with one another; or, if the courts sometimes misapply them in a particular case, and afterward decline to overrule the case, thus producing a jar in the working of the system; this does not prove that there are no legal principles, or that there is no such thing as legal reasoning. This does not demonstrate that a verdant youth could make himself an efficient practical lawyer by studying mere conglomerations of legal points, such as are presented in many books called law books, and turning away from books which treat of legal subjects in a more orderly manner; out of fear, that, if he did not do this, he should be led to regard the law as a science, contrary to the truth in the case. Practically, there are sometimes found to be judges who have no conception of the orderly nature of the law; and the well-educated lawyer, in appearing before them, will shape his address somewhat to suit their order of

mind; though, in the eyes of most judges, the law is what it is stated in these pages to be. But every man, in learning the law, if he wishes to remember what he reads, is compelled, by the laws of his own mind, to read those legal expositions which present the subject in an orderly shape, and unfold the reasons while they present the points; else what he attempts to acquire will be found to slip out of his memory nearly as fast as he puts it in. This is a practical question, to which the student will do well to give early heed.

CHAPTER IX.

THE LAW CONSIDERED AS RESTING ON AUTHORITY.

§ 80. In a celebrated English case, wherein the law of what in legal phrase is termed bailments was very much discussed by the Court of Queen's Bench, the judges severally giving their opinions Powell, J., as reported by Lord Raymond, said: "Let us consider the reason of the case. *For nothing is law that is not reason.*"[1] If the judge had said, "Nothing is law that is not *legal* reason," adding such an explanation of legal reason as is given in our last chapter; or, if he had said, "Nothing is law that does not rest on legal principle," explaining legal principle as it is done in our chapter before the last; few legal persons would ever afterward have questioned the correctness of the observation. Quite likely his observation was not reported with entire accuracy; or, if it was, we may suppose, that, by the term reason, he meant, not "every man's natural reason," but the "artificial perfection of reason" of which Lord Coke, in books then familiar to the profession, had spoken as the "life of the law."[2] As it is, the observation has always been admired, and it has been often quoted by later writers.[3]

§ 81. Sir William Jones, however, who seems not

[1] Coggs *v.* Bernard, 2 Ld. Raym. 909, 911. [2] Ante, § 72.
[3] Bartlett's Familiar Quotations, 379.

to have paused to weigh the expression with quite so much carefulness, characterizes it as "a maxim in theory excellent, but in practice dangerous; as many rules, true in the abstract, are false in the concrete. For," he continues, "since the reason of Titus may, and frequently does, differ from the reason of Septimius, no man *who is not a lawyer* would, in many instances, know how to advise, unless courts were bound by *authority*, as firmly as the pagan deities were supposed to be bound by the decrees of fate."[1] This statement of Sir William Jones, however conflicting it may at first seem to be with what has gone before in these pages, is, when carefully examined, exactly in accord with it. The reason of the law, which is its life, is not such as would occur to every "man who is not a lawyer," wherein Titus and Septimius might differ; but it is the law's reason; the reason which is made up of legal principles duly woven together; the reason, therefore, which rests on a basis of *authority*.

§ 82. Consequently we are to accept this statement of Sir William Jones as sound, both in theory and in practice; while still it does not conflict, as he seemed to deem it did, with the equally sound statement of Sir John Powell. Yet when it is said that the courts are "bound by *authority*, as firmly as the pagan deities were supposed to be bound by the decrees of fate," the expression must not be misunderstood. In law books, the word "authority" is used with great latitude, meaning one thing in one place,

[1] Jones Bailments, Am. Ed. of 1807, p. 69, 70.

and another thing in another. Sometimes it is employed to denote every sort of thing which may properly be cited to a court to influence its judgment. In this sense, courts are not bound by every authority; but they are to weigh the authorities, and to yield only to such ones as, on a consideration of many particulars applicable to each, and to the collective whole, should, on principles which cannot be stated in this single sentence, bear down the scale of justice. Sometimes, also, the word authority is used in an intermediate sense, neither so broad as in the last-mentioned meaning, nor so narrow as in the meaning given it by Sir William Jones.

§ 83. With this precaution, therefore, as to the sense in which the word authority is to be taken, let us proceed to a more minute consideration of the subject of this chapter; which is,— to change the form a little from what it assumes in the title of the chapter, — How, and to what extent, does the law rest in authority? A consideration of the particular authorities belongs to chapters further on.

§ 84. The law which, in this country, we call constitutional law, being the provisions of the written Constitution of the United States and of the written constitutions of the several States, rests in authority in a sense requiring no explanation here. The same may be said of the statute law of the United States and of the several States; being the written expressions of the will of the respective law-making bodies. Still this is but a very small part of the law which governs the people of this country; the unwritten or common law, being the mass of law which existed as

the controlling power anterior to our written constitutions and our statutes, and which still exists, except as it is modified by the written law, rests in authority in a sense which the author will now attempt to explain. But he must admonish the young reader that the subject is one which can be comprehended in all its parts, and so comprehended as to render every thing connected with it luminous and clear, only by one who has mastered a general knowledge of the law. It is a subject which will be presented to him constantly in the course of his practice; he will therefore have frequent occasion to recur to it, and it is best to attempt such a general explanation here, as, serving its present purpose, will be useful also for future reference.

§ 85. If we go back to the proposition already mentioned,[1] that we can conceive of no such thing, and no such thing can be, as man existing in society without law; therefore that the Creator, who placed man thus, himself gave him law; we shall see, that, of necessity, every new law always was, is now, and ever will be, an addition made to the pre-existing mass of law, or a modification of it, or a repeal or taking out of something before belonging to this mass. Now, if we suppose a court to have been established in the beginning by God, before man had made any new law, it is plain that the judge must have decided the first cause on the "authority" of the law of God, as ordained for the use of man. The decision would, according to the view of such questions prevailing in

[1] Ante, § 43, 45, 47.

countries governed by the common law, become immediately a "judicial precedent," to determine the next case which might arise, of the like sort. It would be what is sometimes spoken of in law books as a legal authority: yet it would not conclusively bind the court, in the next case, if the judge should be of opinion that it was wrongly decided; therefore it would not be an "authority" in exactly the sense in which Sir William Jones used the word in the passage above quoted; because it is a doctrine of our law that the court is not absolutely bound by one case, if the case appears afterward to be wrong.[1] And good judges are always ready to overrule even their own decisions, when the necessity is clear.[2]

§ 86. We see, therefore, that, in the nature of things, there must at some time have been an authority binding the courts, other than the authority of a statute, or of a judicial precedent. We see, also, that this authority was the law of God, enacted for the government of man in society. He who gave us this law, gave us also the power to modify it by technical rules, to define and limit the jurisdiction of the courts to enforce it, to make plain what in it may seem obscure, and the like, as shown in a previous chapter.[3] And no nation ever attempted, in terms, to abolish this law. Yet in the course of human refinement this primary law of God is found sometimes to be so explained away by statutes, and adjudications,

[1] 1 Bishop Crim. Proced. § 1046, 1047.

[2] See Matter of Welman, 20 Vt. 653; The State *v.* Nat, 13 Ire. 154; The Louisa Bertha, 14 Jur. 1007, 1 Eng. L. & Eq. 665, 669.

[3] Ante, § 13 et seq.

and the glosses of writers who have assumed to be wiser than God, that little of the original can be discovered by the inquirer after the actual authority which is to bind the courts.

§ 87. It is believed that no considerate person, acquainted with our common-law system, will doubt the proposition to which this reasoning conducts us, and of which it is a part; namely, that the rules of right, and of rightful association, given by God to man, are — so far as they are applicable in judicial proceedings, and so far as they have not been controlled or modified by technical rules, established by legislation, by judicial decision, and the like — portions of the "authority" which binds our tribunals "as firmly as the pagan deities were supposed to be bound by the decrees of fate."[1] Christianity, even, which is a law of God sent afterward, is usually esteemed to be, in a somewhat limited sense, a part of the common laws of England and of our own country.[2]

§ 88. Moreover, as an abstract proposition, it is not competent, all admit, for legislation to overturn what is fundamental in the primary law of God. But it is more doubtful whether a court is ever justified in judicially pronouncing that to be in conflict with such law, which the legislature, by enacting into the form of law, has consequently declared not to be thus in conflict. The abstract doctrine was, on the impeachment of Warren Hastings, stated by Burke, before the House of Lords, in the following eloquent words: "*He* have arbitrary power! My lords, the

[1] Ante, § 81.

[2] 1 Bishop Crim. Law, 8d ed. § 945–947; 2 Ib. 87 and note.

East India Company have not arbitrary power to give him; the king has no arbitrary power to give him; your lordships have not; nor the Commons; nor the whole legislature. We have no arbitrary power to give, because arbitrary power is a thing which neither any man can hold nor any man can give. No man can lawfully govern himself according to his own will, much less can one person be governed by the will of another. We are all born in subjection, all born equally, high and low, governors and governed, in subjection to one great, immutable, pre-existent law, prior to all our devises, and prior to all our contrivances, paramount to all our ideas, and all our sensations, antecedent to our very existence, by which we are knit and connected in the eternal frame of the universe, out of which we cannot stir. This great law does not arise from our conventions or compacts; on the contrary, it gives to our conventions and compacts all the force and sanction they can have; — it does not arise from our vain institutions. Every good gift is of God; all power is of God; — and He, who has given the power, and from whom alone it originates, will never suffer the exercise of it to be practised upon any less solid foundation than the power itself. If, then, all dominion of man over man is the effect of the Divine disposition, it is bound by the eternal laws of Him that gave it, with which no human authority can dispense; neither he that exercises it, nor even those who are subject to it; and, if they were mad enough to make an express compact that should release their magistrate from his duty, and should declare their lives, liberties, and properties dependent

upon, not rules and laws, but his mere capricious will, that covenant would be void." [1]

§ 89. Even, to conduct the discussion further than Burke has here done, if man were independent of the higher Power; if he had created himself; if he preserved himself, governed himself; if there were no world beyond his own, and existence with him closed with the decay of the body, — still he must have his being according to some law, a violation of which law would end him. And what is true of an individual must be true also of the race, and of all combinations of men. Neither any individual one, therefore, nor the whole together, should enter into any arrangement, or yield to any dictation, which would end either the race or the human association. But the real case, with us, is stronger than it is thus supposed. We exist, not by our own volition; we decide not for ourselves our destinies here, except in part; we are bound to other worlds by the tie of a common brotherhood, having a common Father with all the universe; and we must, therefore, conform to laws above our own. Those laws do not require us to abstain from making such regulations among ourselves as necessity demands; yet there is a point beyond which we cannot go. And to say that no such point exists,

[1] 7 Burke's Works, Bost. Ed. of 1827, p. 110. This is also a doctrine of the civil law. "The rules of the law of nature," says Domat, "are those which God himself hath established, and which he communicates to mankind by the light of reason. These are the laws which have in them a justice that cannot be changed, which is the same at all times and in all places; and whether they are set down in writing or not, no human authority can abolish them, or make any alteration in them." Domat, Cush. Ed. p. 109.

but that whatever a legislative body may see fit to declare to be law binds the subject, is as absurd as it is impious. Differences of opinion there will be as to where the ultimate point lies; but this fact changes not the doctrine itself.

§ 90. When we come to inquire what, in practice, the courts hold upon this subject, we do not meet with denials of the abstract doctrine; but most judges are either reluctant to take the jurisdiction, or they decline the jurisdiction altogether, to enforce the doctrine. The judicial utterances and determinations, on this point, may be stated as follows: It is pretty plainly the better opinion, in our country, that there are limitations upon the legislative power other than what are expressed in our State and national constitutions.[1] Thus, no clause in the federal Constitution prohibits the States from passing retrospective laws, unless they are also *ex post facto*;[2] and the constitutions of some of the States do not contain this prohibition: but it is generally understood that the legislatures of these States have no authority to bind

[1] University *v.* Williams, 9 Gill & J. 365, 408; Ward *v.* Barnard, 1 Aikens, 121, 127; Lyman *v.* Mower, 2 Vt. 517, 518; Merrill *v.* Sherburne, 1 N. H. 199, 213; Goshen *v.* Stonington, 4 Conn. 209, 225; Vanhorn *v.* Dorrance, 2 Dall. 304; Williams *v.* Robinson, 6 Cush. 333, 335; Taylor *v.* Porter, 4 Hill, N. Y. 140, 149; Bloodgood *v.* Mohawk and Hudson Railroad, 18 Wend. 9, 56; Varick *v.* Smith, 5 Paige, 137, 159; Wilkinson *v.* Leland, 2 Pet. 627, 656; Bowman *v.* Middleton, 1 Bay, 252; Cochran *v.* Van Surlay, 20 Wend. 365, 373, by Chancellor Walworth; Calder *v.* Bull, 3 Dall. 386, by Chase, J.; Medford *v.* Learned, 16 Mass. 215, 217; Bates *v.* Kimball, 2 D. Chip. 77, 89; Commonwealth *v.* Worcester, 3 Pick. 462, 472; Ex parte Martin, 13 Ark. 198, 206.

[2] Watson *v.* Mercer, 8 Pet. 88, 110; Bennett *v.* Boggs, Bald. 60; Satterlee *v.* Matthewson, 2 Pet. 380, 414; Charles River Bridge *v.* Warren Bridge, 11 Pet. 420.

the subjects by such laws; as, to take away property vested in one man, and give it to another.[1] "To the legislature," said Marshall, C. J., "all legislative power is granted; but the question, whether the act of transferring the property of an individual to the public be in the nature of the legislative power, is well worthy of serious reflection."[2] So it has been laid down generally, that "statutes, passed against the plain and obvious principles of common right and common reason, are absolutely null and void, as *far as they are calculated to operate against those principles.*"[3] This doctrine commends itself, moreover, by a considerable weight of English[4] as well as of American judicial authority.

§ 91. On the other hand, it is neither the province

[1] 1 Bishop Mar. & Div. 4th ed. § 670, 678; Story Const. § 1399; and the cases cited in the first note to this section.

[2] Fletcher *v.* Peck, 6 Cranch, 87, 135, 136.

[3] Ham *v.* McClaws, 1 Bay, 93, 98; Barksdale *v.* Morrison, Harper, 101.

[4] Day *v.* Savadge, Hob. 85, 87; Bonham's case, 8 Co. 114, 118, where it is said, "It appears in our books, that in many cases the common law will control acts of parliament, and sometimes adjudge them to be utterly void; for, when an act of parliament is against common right and reason, or repugnant, or impossible to be performed, the common law will control it, and adjudge such act to be void;" London *v.* Wood, 12 Mod. 669, 687; 1 Fonb. Eq. c. 1, § 3; Sharpe *v.* Bickerdyke, 3 Dow, 102; 1 Bl. Com. 41. Christian, one of the annotators of Blackstone, dissents from the doctrine, and says that a judge, instead of refusing to administer an unjust law, "ought to resign his office." But he states for his dissent a reason, which, however forcible in appearance it may be in England, does not exist in this country. "If," he says, "the judicial power were competent to decide that an act of parliament was void because it was contrary to natural justice, upon an appeal to the House of Lords this inconsistency would be the consequence, that, as judges, they must declare void what as legislators they had enacted should be valid." Bl. Com. ut supra, note.

not the right of a judge to decide any cause on his individual, private views. The judicial mind, in which law is said to repose, is distinct from his personal conscience. When, therefore, the highest law-making power has enacted what it conceives to be just, there is often a practical difficulty in bringing the enactment to any recognized standard, whereby to pronounce it unjust. Yet something like this is done in respect to the by-laws of municipal and other corporations, the judges setting them aside as void whenever deemed either not reasonable or not beneficial. We may, therefore, conclude, that courts will not usually disregard a plain and distinct legislative act, merely because the individual judges consider its provisions unjust, or contrary to natural reason, or to the law of God. Some of the authorities, indeed, go apparently to the extent that they have no right to do so in any case;[1] but, in this country, at least, the weight of judicial opinion, and probably of reason, preponderates in favor of the right. The ground is, that such statutes transcend the powers which the people have vested, or could vest, in the legislative body, which is itself circumscribed, like the judicial and executive departments. In this respect, the case is supposed not to stand here precisely as in England. But the reader will permit it to be repeated, that this jurisdiction, if assumed by the court, is not exactly a jurisdiction to determine a legislative act to be void because it is in

[1] 1 Kent Com. 448; Beach v. Woodhull, Pet. C. C. 2, 6; Bennett v. Boggs, Bald. 60, 74; Braddee v. Brownfield, 2 Watts & S. 271, 285; Cochran v. Van Surlay, 20 Wend. 365, 382, by Senator Verplanck; Calder v. Bull, 3 Dall. 386, by Paterson and Iredell, Js.

conflict with the law of God; the reason being, rather, that it is not within the authority vested in the legislature by the Constitution.[1]

§ 92. This so minute statement of doctrines has been given in order to impress the reader the more strongly with the great proposition, that, where there is no conflict between the law of God as made manifest in the nature of human association and existence, and the law as expounded by the tribunals or defined by the statutes, this law of God is the law of the court in cases where it is applicable. It is the oldest of all law, and the foundation upon which all other law is built. We have supposed,[2] that the first thing placed upon or added to this fundamental law of God was a judicial decision. It might, in fact, have been a statute; or, if men lived in tolerable harmony for a long time without lawsuits, it might have been a custom which had grown up, and become universally accepted and approved, without a judicial decision and without a statute. Such a custom would become just as much law, and just as much an authority binding the courts, when lawsuits came to be instituted, as any thing else.[3]

§ 93. Going back once more to the beginning of things, and supposing that the first addition made to the law given by God to men was in the form of a judicial precedent, we see, that this primary law was

[1] The reader will find the question for this country discussed at considerable length in Smith on Statute and Constitutional Law, p. 236–309; and for England in Dwarris on Statutes, 2d ed. 480–484, 523. And see Broom Leg. Max. 2d ed. 28.

[2] Ante, § 85.

[3] Ante, § 54.

the sole authority to guide the court in this first judicial decision. But, as we pass down the line of time, authorities proceeding more directly from men multiply. Yet if these are to be regarded more than formerly because they are more numerous, they do not render the first less weighty when it speaks than it originally was, or take from it its original name of authority. When Lord Coke, therefore, mentions "novelty" in the law as a thing to be avoided, — "for I have ever holden all new or private interpretations, or opinions, which have no ground or warrant out of the reason or rule of our books, or former precedents, to be dangerous"[1] — we understand his meaning. The "reason or rule of our books" acknowledges the various kinds and sources of law mentioned in the foregoing pages of this volume; but, if a man should think the law ought to be so and so, different from what it is set down to be in our books, this is a "novelty," and it should be discouraged; for it is the business of the lawyer to inquire what the law is, not what it should be. The law consists of rule, of reason, — or, as the expression was in a previous chapter, of legal principles, — and not of mere points as presented in particular cases. Therefore he who, whether as a judge, or as a lawyer arguing a cause, or as a legal author, brings forward new applications of old principles, does not attempt the introduction of any novelty; he merely expounds anew the old.

§ 94. This matter was once stated by a very able

[1] 7 Co. Pref. Fras. ed. x.

Massachusetts judge, as follows: "It is one of the great merits and advantages of the common law, that, instead of a series of detailed practical rules, established by positive provisions, and adapted to the precise circumstances of particular cases, which would become obsolete and fail when the practice and course of business to which they apply should cease or change, the common law consists of a few broad and comprehensive principles, founded on reason, natural justice, and enlightened public policy, modified and adapted to the circumstances of all the particular cases which fall within it. These general principles of equity and policy are rendered precise, specific, and adapted to practical use, by usage, which is the proof of their general fitness and common convenience, but still more by judicial exposition; so that, when in a course of judicial proceeding by tribunals of the highest authority, the general rule has been modified, limited, and applied, according to particular cases, such judicial exposition, when well settled and acquiesced in, becomes itself a precedent, and forms a rule of law for future cases under like circumstances. . . . The consequence of this state of the law is, that, when a new practice or new course of business arises, the rights and duties of parties are not without a law to govern them; the general considerations of reason, justice, and policy, which underlie the particular rules of the common law, will still apply, modified and adapted by the same considerations, to the new circumstances. If these are such as give rise to controversy and litigation, they soon, like previous cases, come to be settled by judicial exposition, and the prin-

ciples thus settled soon come to have the effect of precise and practical rules. Therefore [applying these observations to the case before the court], although steamboats and railroads are but of yesterday, yet the principle which governs the rights and duties of carriers of passengers, and also those which regulate the rights and duties of carriers of goods, and of the owners of goods carried, have a deep and established foundation in the common law, subject only to such modifications as new circumstances may render necessary and mutually beneficial."[1]

§ 95. We come now to consider more particularly the weight which is to be given judicial decisions, as authority binding the courts. As a general rule, a decision pronounced by an inferior court does not bind a superior one; still there are circumstances in which, by reason of long usage, or the character of the inferior judges, or something of the sort, such decisions or a course of decisions will be received by the higher tribunal with great respect. In England this apparent exception becomes almost the rule; or, rather, a system of co-ordinate superior courts exists, and then the decisions of one are read in another, though perhaps not in the strictest sense as authority; and, even in the House of Lords, very great weight is given to the adjudications of the working superior courts, whose judgments it has still jurisdiction to revise. But such is hardly authority in the very narrowest meaning of the word.

[1] Shaw, C. J., in Norway Plains Co. *v.* Boston and Maine Railroad, 1 Gray, 263, 267, 268. And for similar observations see Bell *v.* The State, 1 Swan, Tenn. 42.

§ 96. Then, again, we should bear in mind how the stream of judicial authority has flowed to us. An inhabitant of one of the original thirteen States, for instance, traces it back into the colonial times to the period when the first English emigrants brought to the colony the common and statutory law as it then existed in England, according to principles which have already been explained.[1] The decisions of the courts of the mother country, rendered previous to this period, are to the same extent authority as are now the decisions of the State courts; with this exception, that, in every case, it may be made a question whether the law found to exist in England was adapted to the altered circumstances of the colonists, and, as such, was transferred to the colony.[2] But later English adjudications are not in so strict a sense authority; though, as the colonies formed one country with England and the other parts of the kingdom and its dependencies, the English decisions pronounced afterward, down to the Revolution, are deemed with us somewhat more weighty than those which have been rendered since.[3]

§ 97. It would require an explanation too extended to be profitable for the student in this early stage of his studies, to show under what circumstances the decisions of the State courts are authority in the United States tribunals, and in what circumstances the latter are authority in the former. And, since this cannot be done in full, it is better to omit the topic altogether here; with the single observation,

[1] Ante, § 43 et seq. [2] Ante, § 51.

[3] And see Koontz *v.* Nabb, 16 Md. 549, 555.

that, as to some questions, the United States tribunals are bound by the adjudications of the State courts; while, as to others, it is just the reverse.

§ 98. We have already seen,[1] that the judges are not necessarily, under all circumstances, to follow a single adjudication as an authority, though it should proceed from a court whose decisions, as a general rule, they are bound to obey. If the case is one of "novelty," to use the language of Lord Coke,[2]—that is, if it does not accord with the *principles* which constitute the pre-existing law, or especially if it is in conflict with them, and this is shown by a course of *legal reasoning*, — it is, as a general proposition, not only the right, but the duty, of the court to decide in a way contrary to such former adjudication. This is termed, in the language of the law books, *overruling* the adjudication. And the reason for this is, that a court is always bound by *authority;* and authority does not consist of *cases*, but of *principles*.

§ 99. In the year 1706, there was decided in England a case wherein an executor of a will sued a man for a sum of money due the deceased in his lifetime. This defendant pleaded to the suit, that he had already made payment to another executor, authorized, as this one was, by the Ecclesiastical Court. The fact appeared, that the executor to whom the payment was made, had set up a forged will, and had got such forged will allowed in the Ecclesiastical Court; then he had taken the money from the defendant; then the Ecclesiastical Court had annulled the probate of this

[1] Ante, § 85. [2] Ante, § 93.

will, and had admitted to probate the true will, of which true will the plaintiff was the executor, named therein as such by the testator. Upon these facts the court decided, that the defendant was under legal obligation to pay the money a second time, not being permitted to avail himself of the payment made to the executor under the forged will.[1] Afterward, in 1789, when this decision had stood eighty-three years in the English books as apparently the unquestioned law, the same question came up again, and the court decided it the other way, and expressly overruled this case; as not being in fact, what it was in appearance, the law of England.[2]

§ 100. It may be tedious to the student, but there is no better way to explain to him how a question of this sort is disposed of in the law, than to copy, in the first place, the opinion which was shown afterward to be erroneous, and then to copy in part the opinion in which the error was pointed out. Said Trevor, C. J., in the first case, speaking for the whole court: "An executor derives all his authority from the testator himself, and he of himself, as being executor, without any thing more, has the power of disposing of the estate of the testator, of releasing a debt due to the testator, &c. True it is, before an action brought a probate is necessary; but that is only requisite to ascertain the court that the plaintiff is executor, and has a right to bring his action, not to give the plaintiff any title or interest to the estate of the testator. If the testator appoints no executor, or dies intestate, the adminis-

[1] Anonymous, 1 Comyns, 150. [2] Allen v. Dundas, 3 T. R. 125.

trator is appointed by the ordinary, and derives his authority from him; and, therefore, if administration is granted, all acts by him as long as the administration continues in force are good, and even though it be afterwards repealed. But there is a difference taken when an administration is repealed upon a citation, or upon an appeal.[1] If it is upon an appeal, which suspends the administration, all acts after such suspension are void; if it is repealed upon a citation, all the acts of the administrator, till the repeal, are good, for by the citation the grant of the administration is not suspended; therefore, if the administration be repealed, all acts done by an administrator, which a rightful administrator might have done, shall be allowed, for in them he acted in the place of the rightful administrator. But it is otherwise in the case of an executor; for the probate of the will gives no authority at all to him, and, therefore, if he is not the rightful executor, he has no authority at all, and it would be unreasonable that a person who has no authority should dispose of the interest of another. The rightful executor has not only a trust or authority to administer the goods of the testator, but also an interest annexed to the trust; and, therefore, the property of all the goods after administration is completely vested in him; and, consequently, the disposition of the goods of the testator, or release of his debts, is a disposition of the interest of the rightful executor, and therefore such disposition does not bind him. And so it was resolved 1 *Rol. Ab.* 919, which

[1] Referring to Packman's case, 6 Co. 18 *b.*

case was never denied, that I heard of. And this case is not like the case of an officer, who officiated without legal authority; as, the deputy of the deputy of a steward, &c.; for rightful acts done by him are good, for he is an officer *de facto*, and in the immediate and open execution of his office, and the parties did not know whether he had authority or not."[1]

§ 101. To the student, who has not yet become acquainted with the principles of our law, this reasoning may seem as good as any, and the decision well enough. But it was shown to be wrong by a course of *legal reasoning*, — or, in other words, a statement of *legal principles*, — contradicting the above; therefore, as the *principle*, or *reason*, was the *authority* binding the court, the court was compelled to overrule the decision. Said Ashhurst, J.: "This is different from payments under forged bonds or bills of exchange; for there the party is to exercise his own judgment, and acts at his peril: a payment in such a case is a voluntary act, though perhaps the party is not guilty of any negligence in point of fact. But here the defendant acted under the authority of a court of law; every person is bound to pay deference to a judicial act of a court having competent jurisdiction. Here the Spiritual Court had jurisdiction over the subject matter; and every person was bound to give credit to the probate till it was vacated. . . . . The foundation of my opinion is, that every person is bound by the judicial acts of a court having

[1] Anonymous, 1 Comyns, 150, 151, 152.

competent authority; and, during the existence of such judicial act, the law will protect every person obeying it." Said Buller, J.: "The first question to be considered is, — What is the effect of a probate? It has been contended by the plaintiff's counsel, first, that it is not a judicial act; and, secondly, that it is not conclusive. But I am most clearly of opinion that it is a judicial act; for the Ecclesiastical Court may hear and examine the parties on the different sides, whether a will be or be not properly made; that is the only court which can pronounce whether or not the will be good. And the courts of common law have no jurisdiction over the subject. Secondly, the probate is conclusive till it be repealed, and no court of common law can admit evidence to impeach it. . . . As to the case in Comyns [the one quoted in the last section], I think it carries its own death-wound on the face of it. . . . The Chief Justice, in giving the judgment of the court, begins with giving as his reasons, 'that an executor derives all his authority from the testator himself; and that he, of himself, as being executor, without any thing more, has the power of disposing of the testator's estate. True it is, before an action brought a probate is necessary, but that is only requisite to ascertain the court that the plaintiff is executor.' From this admission it appears that there are no means of ascertaining who is executor but by applying to the Ecclesiastical Court for a probate; so that the reason destroys itself. Then he proceeds to point out the difference between a citation and an appeal. Now, if that distinction extend to the case of executors as well as administrators, it will

decide the present case. But he goes on to add, in that case, 'But it is otherwise in the case of an executor; for the probate of the will gives no authority at all to him.' In that I differ from him; because an executor has an authority which a court of common law cannot dispute. The Chief Justice afterwards goes on to say, that 'that case was not like the case of an officer who officiated without legal authority, as the deputy of the deputy of a steward, &c.; for rightful acts done by him are good, for he is an officer *de facto*, and in the immediate and open execution of his office. And the parties did not know whether he had authority or not.' That is just the present case; for here there was an executor *de facto*, who had obtained a probate; and the defendant neither knew or could tell whether he was rightful executor or not, further than he was informed by the probate, which he could not dispute." Grose, J., added: "No doubt could ever have been entertained on this subject, had it not been for the cases in *Ro. Ab.* and *Comyns;* which struck me at first as being very strong cases to the point for which they were cited. But I am satisfied, by what has been said by my brother Buller, that they cannot be law. The case in Comyns seems to be grounded on a false principle; namely, that the probate of a will gives no authority to the executor. But I think it does, and so much so that it cannot be traversed or denied."[1]

§ 102. The principle which controls the question thus discussed, is, to state it in language a little dif-

[1] Allen *v.* Dundas, 3 T. R. 125, 129–132.

ferent, that, when the law requires a thing to be done, it also protects the doer in the doing. This is but a branch of the great truth upon which all true government is based, that protection to the subject is commensurate with his duty to the government. It is one of those fundamental things which God wove, at the creation, into the framework upon which human society was by him placed. And the court, in laying down the erroneous doctrine in the first of the two cases cited, did not dispute the existence of this principle, but started out with the erroneous statement, "that an executor derives all his authority from the testator himself." It is true that the testator names, in the will, the executor; but, when the will is admitted to probate, the executor takes then his authority from the law; and, if he sues one who owes the estate, the defendant cannot dispute his authority while the probate remains unreversed. And, whenever one does voluntarily what the court will compel him to do on suit, it will protect him in doing it, the same as if he had done it on compulsion. Consequently the payment to the wrongful executor was, under the circumstances, just as good a protection to the party paying, as if the executor named in the true will had caused it to be admitted to probate instead of the forged one, and the payment had been made to him.

§ 103. The author has made this restatement of the principles, not because it was not sufficiently made by the court in the second case, but to impress the reader more distinctly with the thought, that the law is a system of principles, and the principles are the

law itself, while the cases are only to be received in the nature of evidence, tending more or less strongly to prove the principles; as well as to make apparent another thing; namely, that the common-law principles do not, like the statutory ones, rest in a precise form of words. And a great part of the skill, both of judges and of legal writers, consists in the selection of such language as shall, in the most accurate and clear manner, convey to the reader the image of those principles, which, unseen by the outward eye, lie as pictures before the eye of the legal understanding, and form together the body of our common or unwritten law, the same as the statute books do the body of our written law.

§ 104. Now, when the principles are ascertained, they are just as authoritative upon the courts, and control the decisions in particular cases with the same absolute sway, as the express words of a legislative enactment.[1] The difference between a common-law and statutory principle is simply this, that, while the former may not be always readily ascertained to exist, or its terms or limits may be a little uncertain or undefined; there is ordinarily no question as to the existence of the latter, and, being clothed in exact words, its limits are generally supposed to be ascertainable with greater certainty, though, in fact, the contrary of this last statement is often true.

§ 105. We shall consider, in other chapters, how the principles of our law, common and statutory, are to be ascertained. And then we shall have occasion

[1] Commonwealth *v.* Chapman, 13 Met. 68, 70; Martin *v.* Martin, 25 Ala. 201; Powell *v.* Brandon, 24 Missis. 343.

to see, that the books contain multitudes of *cases* which have been overruled; while, on the other hand, the courts often refuse to overrule a case deemed by the judges to have been originally decided wrongly. How and why these things are, we shall consider in the chapters thus alluded to. In the mean time let the student reflect, that he is standing upon the verge of a very serious profession, wherein great brain-work must be done, if he would succeed. He should early acquire the habit of determining for himself, whether the particular decisions he reads in the books are *correct*, and their conclusions are the *law*. No greater mistake can be made, than for him to take it for granted and as of course, that every thing he reads in his books, or hears from his preceptor, is to be laid away in his memory as being the law. To make this mistake is to stumble at the outset; and, in such a stumbling, there is often a fatal fall. It is the great error of the legal education of the age.

§ 106. A few days ago, the writer of these pages was in conversation with an old man, whose prime of manhood had been spent in such triumphs at the bar as were the envy and delight of all his juniors and contemporaries, and who for a time occupied with the highest honor a seat upon the supreme bench of his own State; and, the topic turning to this book, he said: "I wish you to tell the young men of this country, that they must *think*. The want of thought is the great want of the professional mind in the present age."

§ 107. So it is: and men think the less in proportion as the need of thought is greater. Let us look;

and, as we look, find some further illustrations also of the great doctrine of this chapter; namely, that the law is what "authority" determines it to be, and that the voice of "authority" is nothing other than the language of those principles which constitute the law. Let us begin with some questions of a public nature; because, if there has been a general failure to look, and to think, in these cases, the reason must be, that lack of thought, lack of looking, is general, and is not confined to a few isolated instances, of perhaps inferior minds in the profession.

§ 108. The American Law Register for March, 1867, opens with an article on "Trial by Impeachment," introduced, by one of the editors, as follows: "This article was prepared by Professor Theo. W. Dwight, as a lecture to the students of the Columbia College Law School, New York, and we have thought that the interest in the subject at the present time would make it specially acceptable to the profession."[1] The lecture was delivered while there was some public talk about impeaching the President of the United States; and the lecturer, after observing that the subject "has recently assumed extraordinary importance," added: "I have thought it well to seize upon the factitious interest which at present attends it, to make some impression upon your minds."

§ 109. It is not the purpose of the author, in this place, to examine at large the positions taken in the lecture, some part of them being sound in law and others not; but only to direct attention to what ap-

[1] 6 Am. Law Reg. N.S. 257.

pears to have been intended to be its principal point; namely, that, in order to convict the President upon an impeachment found, there must be proved against him either treason or bribery, which are specifically named in the Constitution, or else some offence defined and made indictable by some statute of the United States. No common-law crime, the lecturer maintained, could furnish the ground of impeachment; and he gave as the reason, that "there are under the laws of the United States no common-law crimes, but only those which are contrary to some positive statutory rule."[1] Now, the President carries on his official functions, as every body knows, in the District of Columbia; a place purchased by the United States in pursuance of a provision of the Constitution. It is under the sole jurisdiction of the General Government; and the legal principles which led the courts to hold, that there were no common-law crimes against the United States, which could be committed within the States, do not apply to this locality. Moreover, the District of Columbia, as now constituted, was formerly a part of the State of Maryland: in Maryland, the common law prevailed, and crimes were there punishable under this law;[2] and, when this territory came under the jurisdiction of the United States, it took with it the whole body of the law of Maryland, which still remained in force there.[3] The consequence is, that crimes at the common law ex-

[1] 6 Am. Law Reg. N.S. 268.

[2] The State *v.* Buchanan, 5 Har. & J. 317; ante, § 58, note, *Maryland.*

[3] Kendall *v.* United States, 12 Pet. 524.

ist at this day in the District of Columbia, as much as in any State in the Union; and, let it be remembered, they are there deemed to be, and punished as, crimes against the United States, — common-law crimes against the United States.[1]

§ 110. This view disposes of the matter. It is not a difference of legal *opinion* between the author of this volume and the author of the lecture: it is as though one boy at school should commit an error in adding up a column of figures; and another boy, looking over the "sum," should correct the error. But, though the lecture was delivered to a class of law students who ought to have *thought* and *looked* as well as heard, and was afterward widely published separately in a pamphlet, the error seems to have gone still uncorrected. Thus the American Law Review for July, 1867, published four months later than the number of the Law Register containing the lecture, notices the pamphlet as follows: "Mr. Dwight has written in a dispassionate tone, and from the stand-point of a lawyer; and he has done much to relieve the question from the obscurity which has hitherto enveloped it, and to illustrate the more important points by citations of the great state trials in England and America. We are glad that the pamphlet has been reprinted, and regard it as a valuable contribution to constitutional law."[2]

§ 111. This reviewer properly speaks of the question as one of constitutional law. Yet there is a pro-

[1] United States *v.* Royall, 3 Cranch C. C. 620; United States *v.* Jackson, 4 Cranch C. C. 483.

[2] 1 Am. Law Rev. 737.

vision of the Constitution, referred to by the lecturer, but not quoted at length, which, being a *legal principle* paramount to all others, settles, of itself, the question in a way contrary to what the lecturer indicated. It is: "The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors."[1] Here is an express declaration, that the impeaching power, which is accurately described and pointed out in a previous part of the Constitution, shall be exercised whenever the high officers mentioned are guilty of "treason, felony, or other high crimes and misdemeanors." And this is, according to another provision in the same instrument, "the supreme law of the land."[2] It is a principle of reason, recognized also by the courts everywhere, that, when a constitutional provision is sufficiently full to admit of being executed without legislation superadded, it may and must be so executed; though, when it is not, it operates merely as a command to the legislative department.[3] Here the provision is full; the word "treason" is plain, the word "bribery" is equally plain; these are words known to the common law, and we look to the common law for their interpretation: and the words "other high crimes and misdemeanors" are just as plain in the common law as the more specific terms "treason" and

[1] Const. U.S. art. 2, § 4. [2] Const. U.S. art. 6.

[3] Kentucky *v.* Dennison, 24 How. U.S. 66; Green *v.* Aker, 11 Ind. 223; Jackson *v.* Collins, 16 B. Monr. 214; Bull *v.* Conroe, 13 Wis. 233; Ex parte Archy, 9 Cal. 147.

"bribery." They refer to such acts as are "high crimes and misdemeanors" in the common law of impeachment.[1] Thus, if a judge decides a cause corruptly through "bribery," he is not indictable at the common law, but he is impeachable;[2] therefore, in this constitutional provision, as the words "other high crimes and misdemeanors" follow the word "bribery," to which they are connected by a conjunction, they partake of the like quality, and refer to such as are in England punishable by impeachment.[3] There is, in the Constitution, no corresponding provision giving to the courts jurisdiction to punish common-law offences; hence the distinction between indictments at the common law and impeachments at common law.

§ 112. Let us take a glimpse at another question, still more widely agitated in public than this, showing us how important it is for lawyers to look and think, yet how little looking and thinking is actually done. There have been said all sorts of things about the status of States which have ceased to have governments under the Constitution of the United States, by reason of what is termed an act of secession. Some lawyers have held, that they become thereby territories; others, denying this, have maintained that a State, ceasing to have a State government under the Constitution, stands in the same position, with the same legal rights, as before. To maintain these respective propositions, all sorts of arguments have been resorted to, the language has been ransacked for words, and

[1] 1 Bishop Crim. Law, 3d ed. § 272.
[2] 1 Bishop Crim. Law, 3d ed. § 914–916; 2 Ib. 97.
[3] 1 Bishop Crim. Law, 3d ed. § 275.

all history for facts. But the whole depends upon simple legal principles, written in that "supreme law of the land" which is termed the Constitution of the United States. "The United States shall guarantee to every State in this Union a republican form of government."[1] This clause contemplates an act of secession,—the existence of a State without a government recognized by the United States,—and says, that, when this takes place, the United States shall give such State a "republican form of government." And it calls the locality to which the government is to be given, a "State." This is the language of the Constitution; and, since it is by its terms "supreme law," any discussion outside this instrument is simply absurd. Every young man, entering upon the law, should remember, that, before he undertakes a legal argument, he should *look* for the principles to be resorted to, and then *think*.

§ 113. But, when a State has ceased to have a government, within the meaning of the Constitution of the United States, having cast off its constitutional government by an act of internal revolution, there is no way in which it can get a government again except by another act of revolution, or by legislation. Under the Constitution of the United States, it cannot legislate, for it has ceased to have a legislature. And as the Constitution knows nothing of revolution, and as the United States has a legislature, and the latter is commanded by the Constitution to give the State a "government," it follows that Congress is under con-

[1] Const. U.S. art. 3, § 4.

stitutional obligation to legislate for the reclothing of the denuded State in governmental habiliments. If Congress undertakes to do the same with a State which has always been clothed, the latter has the right to say, "Hands off." Therefore a State without a government stands in a different relation to the United States from one with a government. And, if the reader chooses to take the Constitution, and examine the "legal principles" therein stated, he will find other points of difference besides the one just mentioned; making, in short, the relations of these two classes of States to the General Government very dissimilar.[1] But we have had every sort of crude notion upon the subject uttered by lawyers, simply because they did not *look* and *think*.

§ 114. Let us go back to one more example of a very public nature. It will be remembered that, during the administration of President Jackson, the question of rechartering the United States Bank came up for decision by Congress. And the two houses having passed a bill for its recharter, the President vetoed it on the ground, among others, that it was unconstitutional, notwithstanding the question of its constitutionality had been decided in the affirmative by the Supreme Court of the United States. The veto-message, which was sent to the Senate, contained the following passage: "The Congress, the Executive, and the court must each for itself be guided by its own opinion of the Constitution. Each public officer who takes an oath to support the Constitution, swears

[1] See, further, post, § 333–338, 473.

that he will support it as he understands it, and not as it is understood by others. It is as much the duty of the House of Representatives, of the Senate, and of the President to decide upon the constitutionality of any bill or resolution, which may be presented to them for passage or approval, as it is of the supreme judges, when it may be brought before them for judicial decision. The opinion of the judges has no more authority over Congress than the opinion of Congress has over the judges; and, on that point, the President is independent of both. The authority of the Supreme Court must not therefore be permitted to control the Congress or the Executive, when acting in their legislative capacities, but to have only such influence as the force of their reasoning may deserve."[1]

§ 115. As soon as this message was read, a tempest began to rage in the Senate, and it raged through the whole country during the succeeding presidential election, and it has scarcely ceased raging now. The very clear and most accurate statement of the law, just quoted, was denounced by the political opponents of the President in unmeasured terms, and all the people who could be influenced by them were made to believe it was rank heresy. "No one," said Mr. Clay, who in the Senate followed Mr. Webster in denouncing the Message, "swears to support it [the Constitution] as he understands it, but to support it simply as it is in truth."[2]

§ 116. If we bring the issue thus made up be-

[1] 11 Benton's Debates, 513, note. [2] 11 Benton's Debates, 536.

tween Jackson and Clay to the test of *authority*, we shall find the question readily settled; and, as a legal question, it is not one about which there are two opinions. Suppose, then, the violation, by the President, or by a member of Congress, of his official oath, is by a statute made punishable as perjury; and suppose a member of Congress, having voted for a measure which he believed to be unconstitutional, while the Supreme Court held it to be constitutional, is indicted before a judicial tribunal under the statute, and the facts appear as thus stated. The court, following the decision of the Supreme Court, which it would be bound to follow, would affirm the constitutionality of the measure for which the defendant had voted. It would next direct the jury to find the defendant guilty; because, though his vote was constitutional, he thought it was not, and for one to swear to what is true in fact, while he believes it to be false, is perjury.

§ 117. The proposition is, that, when a man swears to any thing, though the oath is in form general, in matter of law he swears to the thing "as he understands it." This is an old doctrine, as old as the common law itself, and it has constantly maintained the vigor of its youth, both in England and this country, and at the present day it is as fresh and strong with us as ever. Thus, to go back to the time of Lord Coke, who is the great and overshadowing law authority, he says: "Falsehood in knowledge and mind may be punished, though the words be true. For example, damages were awarded to the plaintiff in the Star Chamber according to the value of his goods

riotously taken away by the defendant: the plaintiff caused two men to swear the value of his goods, that never saw nor knew them; and, though that which they swore was true, yet, because they knew it not, it was a false oath in them, for the which both the procurer and the witnesses were sentenced in the Star Chamber."[1] Now, it will be observed that the form of the oath which the witness takes in court is, to speak "the truth, the whole truth, and nothing but the truth." Yet, in contemplation of law, it is, as the reader sees, to speak the truth "as he understands it." So, in like manner, the form of the oath which the legislator or the President takes is to support the Constitution; while, in contemplation of law, it is to support the Constitution "as he understands it." We have seen, that, if the witness tells what is really true, but he does not understand it to be so, he swears falsely: so, on the other hand, if what the witness states is false, yet he believes it to be true, on what seems to him to be good ground of belief, he is innocent of perjury.[2] And the latter part of this doctrine, as well as the former, applies to the President or a legislator, in respect of the official oath to support the Constitution.

§ 118. The author has just stated that this doctrine is old. Thus, Lord Coke has traced it back to the earliest dawn of light concerning the common law. He continues: "For, as Fleta saith, *Ad rectum juramentum exiguntur tria, veritas, conscientia, judicium;* truth and conscience in the witness, and

[1] Gurneis's case, 3 Inst. 166. [2] 2 Bishop Crim. Law, § 1007.

judgment in the judge. And herewith agreeth Bracton, that a man may swear the truth, and yet be perjured. *Dicunt quidam verum, et mentiuntur, et pejerant, eo quòd contra mentem vadunt. Ut si Judæus juraverit Christum natum ex virgine, perjuriam committet, quia contra mentem vadit, quia non credit ita esse et jurat.*"[1]

§ 119. In like manner we may trace the doctrine down from Lord Coke, through all the books on the criminal law, and through the adjudged cases, to the present time. The student, who is curious on this point, will find help from consulting the note.[2] The last statement of the doctrine by any text-writer, is in the author's work on the Criminal Law. It is there set down as follows: "If the witness supposes he is tes-

[1] 3 Inst. 166.

[2] Ockley's case, Palmer, 294; Allen *v.* Westley, Het. 97; 1 Hawk. P. C. Curw. ed. p. 433, § 6; 1 Gab. Crim. Law, 793; 2 Deacon Crim. Law, 1000; Archb. Crim. Law Proceed. 599; Archb. Crim. Pl. & Ev. 13th Eng. ed. 680; 2 Chit. Crim. Law, 303; 2 Russ. Crimes, Grea. ed. 597; Whart. Am. Crim. Law, 4th ed. § 2201; Rex *v.* Edwards, 2 Russ. Crimes, Grea. ed. 597, note; Rex *v.* Mawbey, 6 T. R. 619, 637; Commonwealth *v.* Hatstat, 2 Boston Law Reporter, 177, 179; People *v.* McKinney, 3 Parker C. C. 510; The State *v.* Cruikshank, 6 Blackf. 62. These authorities are all one way. They all sustain the doctrine of the text; but, as I wish to cite every thing, I will add, that there is one case, reported in a book of reports which Mr. Wallace, in his Reporters, 3d ed. p. 226, says is, in point of reliability, "*so so*;" namely, the 3d of Modern, wherein that half-fabulous personage, "*Curia*," observes, by way of dictum: "There is a difference when a man swears a thing which is true in fact, and yet he doth not know it to be so, and to swear a thing to be true which is really false; the first is perjury before God, and the other is an offence of which the law takes notice." Rex v. Hinton, 3 Mod. 122. This is the only passage I ever saw in any law book, conflicting, even by way of dictum, with the doctrine of the text; and this leaves the offence to be *perjury before God*. But every lawyer knows that such an observation, from such a source, has no weight against a current of legal authority.

tifying falsely, it is corrupt as to him, and a perversion of the truth in a course of justice; it is therefore perjury, though in fact what he says is true." [1] Among the American cases, is one in Indiana decided in 1841, when the bench was occupied by able judges; and Blackford, a very competent judge, said: "To constitute perjury, the oath must, of course, be false; but that may be the case, whilst, at the same time, the matter sworn to is true. The law is, that what is sworn to must be either false in fact, or, if true, the defendant must not have known it to be so." The learned judge then quotes Lord Coke, the same as we have done, and adds: "The law is also so stated by the later writers on criminal law. It follows, we think, that, where a man swears that a thing is so, or that he believes it to be so, when, in truth, he does not believe it to be so, *the oath is false* though the fact really be as stated." [2]

§ 120. The Constitution of the United States, while it is the "supreme law," is so only in the sense of excluding all law which is in conflict with it. The law which we are here considering is, though unwritten, as obligatory as any written law, except such written law as is contrary to the unwritten provision. The clauses which require the oath to support the Constitution are not adverse to the unwritten law, but are to be construed by it; hence we see, that the view which President Jackson presented of the oath was merely a statement of what was always the law of the land. But, not adverting to the unwritten legal

[1] 2 Bishop Crim. Law, 3d ed. § 1004.

[2] The State *v.* Cruikshank, 6 Blackf. 62.

principle, the lawyers among the political opponents of the President made a record for themselves such as a careful lawyer should not wish to contemplate of himself. Said Mr. Webster: "He [the President] asserts a right of individual judgment on constitutional questions, which is totally inconsistent with any proper administration of the government, or any regular execution of the laws. Social disorder, entire uncertainty in regard to individual rights and individual duties, the cessation of legal authority, confusion, the dissolution of free government, — all these are the inevitable consequences of the principles adopted by the message, whenever they shall be carried to their full extent. . . . If these opinions of the President be maintained, there is an end of all law and all judicial authority."[1] Mr. Clay, who was to be a rival candidate for the presidency at the then approaching election, expressed himself even more strongly, as follows: "We are about to close one of the longest and most arduous sessions of Congress; . . . and, when we return among our constituents, . . . we shall be compelled to say, . . . that the President has promulgated a rule of action for those who have taken the oath to support the Constitution of the United States, that must, if there be practical conformity to it, introduce general nullification, and end in the absolute subversion of the government."[2] And this is but a specimen of language used by great lawyers throughout the country, then and since.

§ 121. The Veto Message was read in the Senate

[1] Speech of July 11, 1832, 3 Webster's Speeches, 416, 432, 434.

[2] Speech of July 12, 1832, 11 Benton's Debates, 537.

on the 11th of July, 1832; Mr. Webster's speech against it was delivered the next day; and Mr. Clay's, the next day still following. In 1850, eighteen years after, the error had not occurred to Mr. Webster, or been suggested to him, though the whole country was still ringing with declamation on the subject; for he actually voted for a measure, which, according to the opinion maintained by him always, *and still held*, was not within the legislative power of Congress, excusing himself on the ground of a decision of the Supreme Court. It related to the return of fugitives from labor. He said: "I have always thought that the Constitution addressed itself to the legislatures of the States, or to the States themselves. It says, that those persons escaping to other States 'shall be delivered up'; and I confess I have always been of the opinion that it was an injunction upon the States themselves. When it is said that a person escaping into another State, and coming therefore within the jurisdiction of that State, shall be delivered up, it seems to me the import of the clause is, that the State itself, in obedience to the Constitution, shall cause him to be delivered up. That is my judgment. I have always entertained that opinion, and I entertain it now. But when the subject, some years ago, was before the Supreme Court of the United States, the majority of the judges held, that the power to cause fugitives from service to be delivered up was a power to be exercised under the authority of this government. I do not know, on the whole, that it may not have been a fortunate decision. My habit is to respect the result of judicial deliberations and the solemnity of

judicial decisions. As it now stands, the business of seeing that these fugitives are delivered up resides in the power of Congress and the national judicature, and my friend at the head of the judiciary committee [Mr. Mason] has a bill on the subject now before the Senate, which, with some amendments to it, I propose to support with all its provisions, to the fullest extent."[1]

§ 122. And to this day, so far as the author is aware, the present pages are the first in which it has been even attempted to be shown, that the law laid down by President Jackson was the old adjudged law, binding all persons concerned by the force of *authority*. The closing part of the extract just made from Mr. Webster runs into the sophism with which Mr. Clay led off in his speech delivered on the reading of the veto in the Senate. "All men," said he, "are bound to obey the laws, of which the Constitution is the supreme; but must they obey them as they are, or as they understand them? [Here the debater artfully misstates the question, in such a way as, if possible, to elude detection. It is not, whether the President or a member of Congress is to obey the law, but what is its meaning. We have already shown what the meaning of the oath is; of course, it is to be obeyed.] If the obligation of obedience is limited and controlled by the measure of information, — in other words, if the party is bound to obey the Constitution only as he understands it, — what would be the consequence? [It is an inflexible rule that all persons are bound to

[1] Speech of March 7, 1850, 5 Webster's Works, 324, 354, 355.

obey the laws as they are, and not as they understand them.[1] This rule, Mr. Webster unwittingly violated, in the instance mentioned in the last section. *As the law is*, he was bound to vote against the proposition which he voted for.] The judge of an inferior court would disobey the mandate of a superior tribunal, because it was not in conformity to the Constitution, as he understands it; a custom-house officer would disobey a circular from the treasury department, because contrary to the Constitution, as he understands it ; an American Minister would disregard an instruction from the President, communicated through the Department of State, because not agreeable to the Constitution, as he understands it; and a subordinate officer in the army or navy would violate the orders of his superior, because they were not in accordance with the Constitution, as he understands it. We should have nothing settled, nothing stable, nothing fixed. There would be general disorder and confusion throughout every branch of administration, from the highest to the lowest officers — universal nullification." [2]

§ 123. These words of Mr. Clay introduce to us another sophism. Running through all law, through the Constitution, as well as through the common and statutory laws, is the great *legal principle* of obedience by the inferior to the superior. But the Supreme Court is not the superior either of the President or of Congress. Said Thompson, J., speaking for the whole court: "The great powers of the government

[1] 1 Bishop Crim. Law, § 374 et seq.

[2] Speech of July 12, 1832, 11 Benton's Debates, 581, 586.

are divided into separate departments; and, so far as these powers are derived from the Constitution, the departments may be regarded as independent of each other. . . . The executive power is vested in a President; and, as far as his powers are derived from the Constitution, he is beyond the reach of any other department, except in modes prescribed by the Constitution through the impeaching power."[1] And as it is with the executive department, so it is likewise with the legislative. And here we see one of the beauties of our Constitution. While, on the one hand, it becomes necessary for the General Government to determine the extent of its own powers, in any conflict between it and the States; on the other hand, the General Government itself is divided into three departments, each one of which exercises to a certain extent a control over the others. Should the Supreme Court, for example, extending, as is natural to men, the sphere of its jurisdiction, hold it to be within the constitutional power of Congress to enact laws deemed by some State or its people to be in violation of their constitutional rights, this minority could through all time appeal to every senator and representative to set aside such laws, addressing both the judgment and the conscience; and, if any such senator or representative should be convinced the law was unconstitutional, though deeming it wise in itself, he would be bound by his official oath to use against it his influence and his vote. This is a great protection to minorities against the majority; while still it does not

[1] Kendall *v.* United States, 12 Pet. 524, 610.

impair, in the least degree, the harmonious working of our governmental system.

§ 124. Let us turn to a single less public instance, showing the importance and uses of looking into the principles of the law after *authority*, and of thinking. Some years ago, a deputy collector in one of our Custom Houses was bribed, and he procured permits for the landing of large quantities of foreign goods on which the duties were not in fact paid. The permits bore the genuine signature of the proper officer, they were in all respects correct in form, and all the formalities attending any case of regularly passing goods through the Custom House were gone through with. After the fraud was discovered, some of the goods were seized by the Collector; but, on looking into the statutes, he found no one which seemed to meet the case. There was an enactment against landing goods without a permit, and there were various provisions for particular irregularities by the importer in passing his goods through the Custom House. The collector, therefore, after getting all the legal advice he could, and finding, as it was supposed, no statute to meet the case, gave back the goods he had seized, and concluded nothing could be done. Some of the goods were taken to other collection districts, and efforts were there made to hold them; the various legal advisers of the government, and other lawyers called in, had consultations, and it was determined definitively that nothing could be done.

§ 125. In this state of things, some dealers in the same kind of goods, finding they were undersold by the holders of goods on which no duties had been

paid, went to counsel who had not been in the other consultations. These persons were thereupon advised, that, if the collector would make a fresh seizure, the goods could be held. This was done. When the case came before the court, it was seen that the new counsel had presented it as an ordinary one of smuggling, just as though there had been no permit issued; in other words, the very existence of the permit was ignored. And when the defendant brought forward the permit for his protection, it was simply shown to have been procured by the fraud of bribing the deputy collector; rendering it, in law, a nullity, within a principle already brought to view in this volume.[1] As soon as this legal principle was suggested, the whole scene was made light. The result was, that, without further difficulty, a decision was obtained from the court, pronouncing the goods to be smuggled. The goods in the other districts were also seized and confiscated; so the *legal principle*, when evoked from the common law, walked with the same *authority* through the cases as if it had been clothed in statutory form.

§ 126. If the reader will open the author's work on Criminal Procedure, he will there find a case, together with some observations, illustrating the matter now under consideration.[2] And in the course of considerable experience in dealing with questions presenting principles which had been before overlooked, he has rendered himself competent to say, that, in all the field of the law, there is nothing which presents

[1] Ante, § 66–69.

[2] 2 Bishop Crim. Proced. § 587–596.

to any lawyer, young or old, so good an opportunity for useful enterprise, as *thinking* and *looking*, where the mass of professional men close their eyes and their understandings. It is true, that, when one suggests a simple thought which had not occurred to another, he receives no *immediate* credit for it; but it strengthens his mind, prepares him for labors following; and, in the end, it *pays*.

CHAPTER X.

THE THREE-FOLD NATURE OF THE LAW.

§ 127. THERE are some religionists who believe that great truths can be gathered from the Scriptures by means of what is called the science of correspondencies. Be this as it may, there does sometimes appear, to the casual view at least, perhaps also to the more scientific observation, a correspondence between external things and things of an intangible nature. We hear of the "three-fold cord not easily broken;" of the triangle, which is a sort of power in mathematical science; and, in theology, of the Trinity. We might go where the milk-maid plies her vocation, and find the three-legged stool; and, in spite of Cowper "of the Inner Temple," who studied law, but probably did not become very profound in its principles, we should learn that the three-legged stool stands more firmly, especially on uneven ground, than one of either two legs or of four, the latter of which he preferred. Still this poet, after speaking of the very early times, says: —

> "Joint-stools were then created; on three legs
> Upborne they stood. Three legs upholding firm
> A massy slab, in fashion square or round.
> On such a stool immortal Alfred sat,
> And swayed the sceptre of his infant realms." [1]

[1] The Task, b. 1, line 19.

§ 128. In the last two of these quoted lines, Cowper, whether he meant it or not, conveyed a great legal truth. It is, that the law, of which King Alfred was one of the most illustrious patrons and founders, constitutes a trinity not unlike the three-legged stool. There are three, there are three in one, the three are equal the one to the other, we use the name of the one as almost a synonyme of the other; we may put a legal case on the one, or the other, or the other, at pleasure, it being rather a choice of words than ideas; and, when we contemplate the three as combined, we have that whereon rests all judicial decision, all rightful governmental action and power, every thing, in short, which is comprehended under the phrase law of the land. In the last three chapters, we have contemplated each of these three things — each leg of the milk-maid's stool — separately; they are *legal principle*, *legal reason*, *legal authority*, — three in one, the superstructure being all rightful judicial and other governmental action; just as, in this Universe of which we are a part, all things rest on God, whom the theology of most of the civilized world contemplates as three in one, while he is himself All and in all.

§ 129. There are those who rebel at the theological doctrine of the Trinity. They may be right in rebelling, or they may be wrong; this is not the place to consider that question. Still it is a truth, that it is embedded in the prevailing theology. And the same may be said of the triple nature of the law. As the system is received and taught and practised upon, where the common law prevails, the doctrine

is there; but whether rightfully or wrongfully, this also is not the place to inquire. He who undertakes to teach a system, must teach what he finds, and not, in its stead, another system which he may abstractly prefer. And the law is, to the extent mentioned in a previous section and as there explained,[1] a system of science, triple-woven into our very social existence.

§ 130. But the writer may be asked, on what *authority* he states that the law has this triple nature. If so, his answer must be, that sufficient authorities may be found scattered through the last three chapters. If these do not satisfy the inquirer, then let him read through all the books of the law, from the beginning to the end; and, if he reads understandingly, he will *see* that the law has the triple nature thus assigned to it. But there are persons who will still press the writer thus: "Nay, show us a place in the books where it is *said*, 'The law is a trinity.'" Now, this sort of demand, by whomsoever made, is conclusive of one fact, and only one; namely, that the person making it needs still to be taught the fundamentals of legal truth. It is as though a person should present to you a piece of cloth, and say, "Look here, this cloth is striped in three colors, red, white, and blue;" but you should reply, "Nay, show me the place in the *books* where it is so stated." Well, suppose such a place were shown you in the "books," but your inspection of the *cloth* should reveal to your eyes only one color; you would then, preferring the testimony of your own senses to that of the author,

[1] Ante, § 78.

decide, for yourself, not to become a disciple to the doctrine of the triple color of the cloth.

§ 131. This volume being intended by the author to be read by young persons who have not as yet made themselves familiar with the books of the law, and have not associated as much with men of the legal profession as they will have done by and by, it becomes necessary to say here, that, elementary as the chapters in the present connection seem to be, they relate to subjects not so well elucidated heretofore in our books as their importance demands; upon which, therefore, many lawyers will be found to have very crude ideas. There are some who entertain, in their understandings, no opinions whatever upon these subjects. There are others, who, without reflecting upon the matter to any degree worth mentioning, will tell us, that the utterances of the judges upon the bench, and the statutes, and our written constitutions make up the body of our law. Such a statement as this, of course, is incorrect; it has, indeed, scarcely a semblance of truth. The mass of thinking lawyers, however, especially those who have attained any real eminence in their profession, will advise the student, that the doctrines of these chapters are as sound in the actual law of the statements made as they are beautiful in point of theory.

§ 132. A few erratic minds can always be found, ready to denounce the wisdom of the past as folly, and to deny the truth of any new representation of the old, unless it shows our forefathers to have been fools when compared with us. An illustration of this is seen in the fact, that, whenever some demagogue gets

up an interpretation of the Constitution of the United States, the interpretation is received with favor, especially among political lawyers, in proportion as it goes to prove, assuming it to be true, that those who made our Constitution were, in intellectual qualities, allied to the beast with long ears, that brays. Of this class may be mentioned the doctrine of secession, which was widely received, and drenched our country in blood: the oft-repeated statement, on the other hand, made by those who did not accept the doctrine, that secession is a thing not contemplated in the Constitution, therefore that no provision for its treatment is to be there found, and the case is to be ruled by outside principles; whereas, in fact, it was therein distinctly contemplated and provided for, and the course of the government in such an event clearly marked out: and the extraordinary new doctrines regarding impeachment, which were mentioned in our last chapter, and seem to have been received with professional *éclat*, by those who did not think it worth while to examine them; the consequence of which would be, that no judge of a United States tribunal can be ejected from office for any official corruption, and official persons generally may run away with liberty and with law, and our forefathers, says the doctrine, left us no adequate remedy.

§ 133. The law, as described in these chapters, is old; the description itself is to some extent new. Yet it is no less correct because it is new: as, if a visitor to the pyramids describes them in his own style and language, he does not thereby create new pyramids. The new description may be less accurate

than the old, or it may be more accurate: he who undertakes to describe even an old thing, stakes, to some extent, his reputation upon the event of its being accepted as accurate by those who understand the thing, but he neither makes nor professes to make what he describes.

§ 134. When Alfred occupied his three-legged throne,[1] it is probable that he sometimes, like modern men, tipped it back on two legs. So, in the law, when we would determine a point, we sometimes lay down a *principle*, — that is, mention a principle which is admitted to exist in the law, — then *reason* upon it; and thus derive the result without saying, in terms, any thing about *authority*. In this case, two legs of the stool, "principle" and "reason," bear the weight, and nothing is put upon the third, "authority." But, if we should use the third alone, the same result would be produced; and it would be the same if we used the first alone, or the second alone, or all three together: just as, we may suppose, Alfred sat, at pleasure, in these several ways.

§ 135. In fact, principle, reason, authority, these three, while being separate individualities in the law, as we contemplate them, are, in another sense, as we contemplate them, one and indivisible. Perhaps, in like manner, if we could place our eye at the focus of Infinite Truth, we should there view the Deity as one and indivisible; while, at the same time, we should find that the contemplating of him as three assists our finite minds, in our present earthly circumstances,

[1] Ante, § 127.

to understand the better his workings among men. Be this as it may, it is so with regard to the triple nature of the law. Abstractly, it is a unit; practically, considering its own qualities, the organization of our minds, and the formation of our language, we can better explain it, and better contemplate its workings, by regarding it as three in one.

§ 136. It is expected that the student, unfamiliar with law books and with legal expression, will find some difficulty in fully comprehending the discussion contained in the present and last three preceding chapters. Let him overcome the difficulty as well as he can; and, as he goes on with the rest of the volume and with his other law books, *think over these things.* They have furnished a leading topic for the author's thoughts and inquiries, ever since the day when he first entered a law office as a student. And as, in the order of legal things, they are the first to be presented to the student, they are so presented here; but it will not be unprofitable for him to recur to them often hereafter.

BOOK III.

THE SOURCES OF LEGAL AUTHORITY.

CHAPTER XI.

GENERAL SUMMARY.

§ 137. THE law which we call unwritten is so in fact, to a certain extent; while, to a certain other extent, it is written. How and in what sense it is unwritten in fact, will be explained in future chapters. Considering it as written, we are in the present and some succeeding chapters to inquire in what books it is to be found written, and something concerning the qualities and merits of particular books.

§ 138. The law is so pervading in its nature that it enters into, and connects itself with, not only all our human affairs, but, to a greater or less extent, all our human books. Thus we have seen, that the original principles of right and of rightful association, which, at the creation, were given man by God, are, in a sense which has been explained already in these pages,[1] a part of our system of common, or unwritten, law.

[1] Ante, § 13 et seq., 44 et seq., 85 et seq.

These principles are sometimes treated of, in our books, under the term Natural Law. And Grotius, a celebrated writer on natural law and the law of nations, says: "The principles of natural law, if you attend to them rightly, are of themselves patent and evident, almost in the same way as things which are perceived by the external senses; which do not deceive us, if the organs are rightly disposed, and if other things necessary are not wanting." Then, speaking of the way in which he had written the work of which these observations are a part, he states: "In order to give proofs on questions respecting this natural law, I have made use of the testimonies of philosophers, historians, poets, and finally orators. Not that I regard these as judges from whose decision there is no appeal; for they are warped by their party, their argument, their cause; but I quote them as witnesses whose conspiring testimony, proceeding from innumerable different times and places, must be referred to some universal cause, which, in the questions with which we are concerned, can be no other than a right deduction proceeding from the principles of reason, or some common consent."[1] Thus was written that author's great work "Concerning the Laws of War and Peace," the first, in point of time, among the leading productions on this important subject; a work which, in every civilized country, is now consulted by lawyers and diplomatists as an authority.

§ 139. Books, not legal, are often referred to, like-

[1] Grotius de Jure Belli et Pacis, Proleg. Whewell's ed. lxv., lxvi.

wise, for definitions of words, and the general meaning and force of language, upon questions of legal interpretation. Indeed, there is no book which may not, under some circumstances, be called into requisition to illustrate and help determine a point of the law.

§ 140. Professor Greenleaf says: "All civilized nations, being alike members of the great family of sovereignties, may well be supposed to recognize each other's existence, and general public and external relations. The usual appropriate symbols of nationality and sovereignty are the national flag and seal. Every sovereign therefore recognizes, and, of course, the public tribunals and functionaries of every nation take notice of, the existence and titles of all the other sovereign powers in the civilized world, their respective flags, and their seals of state. . . . . Neither is it necessary to prove things which must have happened according to the ordinary course of nature; nor to prove the course of time, or of the heavenly bodies; nor, the ordinary public feasts and festivals; nor, the coincidence of days of the week with days of the month; nor, the meaning of words in the vernacular language; nor, the legal weights and measures; nor, any matter of public history, affecting the whole people; nor, public matters affecting the government of the country."[1] These, and various other things which he mentions, together with many others of a similar nature not mentioned by him, are, in a certain sense, a part of the law, to be learned, not wholly from

[1] 1 Greenl. Ev. § 4, 5.

books denominated law books, but in a measure also from other books.

§ 141. Let the reader observe, that the foregoing are merely illustrations of the uses to which books other than those called law books may be put by the law student and the lawyer. It would be neither possible nor desirable to specify all here.

§ 142. Coming now to books more specifically legal, we shall find it necessary to classify them, and treat of each class in a chapter by itself. The classification will refer rather to the characters of the books, than to the names by which their authors call them. Let us therefore consider, first, Reports of Law Cases; secondly, Treatises or Commentaries on Legal Science; thirdly, Digests of the Reports of Law Cases; fourthly, Abridgments, Selections, and the like, taken from the fuller Reports of Law Cases; fifthly, Works not falling within any of these classes.

CHAPTER XII.

REPORTS OF LAW CASES.

§ 143. When there is a law-suit between two or more persons, the party who complains of the other takes such steps as the law points out, to bring this other party before the court. There the complaint of the first mentioned party, who is usually called the plaintiff, is presented in writing and filed by the clerk for the inspection of all persons concerned; and the answer to the complaint, presented by the other party, usually called the defendant, is filed likewise. Various steps are taken, not necessary to be mentioned here; and, in one way or another, it comes out in the end that the judge lays down the law which is to govern the decision of the cause.

§ 144. In most of the cases, as they are conducted in actual practice, there is found to be no great room for doubt as to what the law is; and a controversy over some matter of fact ends the cause. Sometimes, however, there is a question of law, upon which one or both the parties desire the opinion of a judge or bench of judges of high position, and generally, though not always, of last resort, pronounced after solemn argument made by counsel, and due deliberation given. When the case assumes this form, and a satisfactory result is arrived at by the tribunal, this result is by one or more of the judges publicly stated,

accompanied usually by the reasons; thus constituting an important "judicial precedent."[1] A report of such a proceeding, — usually, especially in these later times, printed, — constitutes what is sometimes called "a case;" though, in a general way, every law-suit is called a case; and such a case may be referred to by counsel to influence the court in succeeding causes. A collection of these cases, printed in one volume or more, is called a book of Reports. Books of this sort are the most numerous of all the books used by lawyers.

§ 145. There is no reason, other than one of convenience, why such a book should be printed. But, in these days, when printing is so common and cheap, a book deemed useful to the public is almost always printed. There are in England, however, even at the present day, a few reports in manuscript, made in the early times, and occasionally referred to now; the call for which has not been sufficient to induce any publisher to put them into print.

§ 146. Yet many of the old English reports, now appearing in print, remained for a considerable time in manuscript, before they were given to the public. And, at the period when this section is written, the oldest book of reports in continuous series bears almost the latest date; having remained in manuscript until it has become almost useless for professional reference. The volume is entitled: "Year Books of the reign of King Edward the First, years 20 and 21. Edited and translated by Alfred J. Horwood, of the

[1] Ante, § 85.

Middle Temple, Barrister at Law. Published by the authority of the Lords Commissioners of Her Majesty's Treasury, under the direction of the Master of the Rolls. London, 1866." There are already before the public three later volumes of these Year Books; and more, it is believed, are to follow. The date of the first reported case in these volumes is 1292. The manuscript from which these reports is produced is in Norman French; and this is given on each alternate page, while an English translation is printed on the opposite page. This collection is made from MSS. found in various depositories in England.

§ 147. But a large part of the Year Books, as they are called, have been for a long time in print, in the Norman French language, though they have not been translated into English. Speaking more particularly of such as were in print before the publication of those manuscript ones mentioned in the last section, Mr. Hoffman observes: "The Year Books, in eleven parts, properly commence in the reign of Edward I. and terminate in the twenty-seventh year of Henry VIII. They were taken down by government reporters, who were allowed an annual stipend. During this long period of two hundred and thirty years, the cases, however, were very far from being uniformly reported. Many years often elapsed without a single reported case. The reign of the second Richard, and several years of the fifth Henry, are without cases; and during the long reign of Henry VIII. we find the cases only of the 12th, 13th, 14th, 18th, 19th, 26th, and 27th years, that is, the cases of seven out of the thirty-eight years of that monarch's reign.

Many of the omitted cases, however, are to be found in several of the abridgments of the law (as those of Fitzherbert, Statham, and Brooke), as also in [the reports of] Dyer, Jenkins, Keilway, and Benloe."[1]

§ 148. The style in which the reporters of the Year Books took down the judicial determinations differs greatly from any of the methods pursued by the reporters of legal decisions at the present day. It may be described, in general terms, as short, racy, unargumentative, and to the point. But these old reports are seldom consulted now; and, though they are still, in a certain sense, legal authorities, the probabilities are so great that the law on a given point may have been altered since the point was decided in those early times, as to lead the judges generally to be cautious about deciding a case on such authority alone.

§ 149. Leaving, then, the Year Books out of view, we come to a consideration of the great body of the books of reports, English and American, from which, as a fountain, we draw, at the present day, those draughts of common-law lore, which, taken either directly from the fountain, or indirectly through the works of legal authors, constitute the principal aliment whereon the legal student is to feed until his mind has gained the peculiar strength necessary for legal practice. To describe minutely each book and its author would lead us too far into the region of legal bibliography, which of itself constitutes a separate branch of professional study; still, without going so

[1] Hoffman Course of Legal Study, 179, 630, note.

far, some profitable ideas may be given the student respecting the body of our legal reports.

§ 150. Lord Coke, who, in point of time, is almost at the beginning of the list of those reporters whose works are commonly consulted at the present day, describes the manner in which causes were in his day argued and adjudged, as follows: "It is one amongst others the great honors of the common laws, that cases of great difficulty are never adjudged or resolved *in tenebris*, or *sub silentio suppressis rationibus;* but, in open court, and there upon solemn and elaborate arguments; first, at the bar, by the counsel learned of either party; . . . and, after, at the bench by the judges, where they argue (the puisne judge beginning, and so ascending) *seriatim*, upon certain days openly and purposely prefixed, declaring at large the authorities, reasons, and causes of their judgments and resolutions."[1] This course, it is believed, has been in substance followed ever since in England. In the early times, and so down to the present day, as a general rule, opinions were not written by the judges in advance to be read in open court; but, on the contrary, each judge, having previously considered and examined the subject as much as he wished, stated orally his views and conclusions; and, at the end, such a judgment was rendered as the majority, after each had thus heard what the others had to say, might dictate.

§ 151. Lord Coke goes on to observe, that this course is "a reverend and honorable proceeding in

[1] 9 Co. Pref. Fras. ed. xxxviii.

law, a grateful satisfaction to the parties, and a great instruction and direction to the attentive and studious hearers." At the same time, it is generally understood that the judges do not hold themselves bound, in strict duty, to give reasons for their decisions; in other words, if a decision should be rendered without a reason announced, the judgment could not, for this cause, be reversed. Still if a judge should habitually decline to state the reasons on which his decisions rested, he would expose himself to grave censure, if nothing more. In a certain sense, it is the right of a losing party to know why the cause goes against him.[1]

§ 152. But if the reasons are thus stated orally, in open court, and the parties have the right to be present, as they always have, this is all which they can require. If the public wish to know more, it, acting through the government, should provide some means for recording and publishing whatever it wishes to preserve. This, we have seen,[2] was done during the time of the Year Books. But after this time, and down to the present moment, in England, there was no public provision made for reporting the law cases; and all which has been done in this way has proceeded from motives of private gratification or private pecuniary profit; or, if the public good was the end sought, still it was by means of private enterprise. In the United States, the law reporting is mainly done by reporters appointed for the purpose by the court, or by other public authority.

[1] See Ram Leg. Judgm. 19 et seq. [2] Ante, § 147.

§ 153. In England, therefore, there are reports of all sorts of merit, made by all sorts of persons, in all sorts of styles. Lord Coke's Reports are in thirteen parts, bound, in the issues of modern days, in six volumes. He tells us that his style of reporting was to listen to all which was said, by counsel and the judges, on one side and on the other; and then to give, in his own form of words and order, the substance of the entire argument on the one side and on the other, followed by the conclusion to which the court arrived. And this great lawyer has, by this means, left us reports which are monuments of legal learning, to which inquirers in all after time must turn with gratitude and delight. But it is evident that such a method of reporting, pursued by an incompetent person, could produce nothing of real value.

§ 154. Many of the old English reports, including the last two parts of Lord Coke's, are mere posthumous reprints of notes taken by the persons whose names they bear, or even by some other persons and transmitted to them, for their private reference, not meant to be printed. And, says Lord Coke: "That succinct method and collection that will serve for the private memorial or repertory, especially of him that knew and heard all, will nothing become a public report for the present and all posterity, or be sufficient to instruct those readers who, of themselves, know nothing, but must be instructed by the report only in the right rule and reason of the case in question."[1] The consequence is, that all the reports of

[1] 7 Co. Pref. Fras. ed. iv.

this class are more or less unsatisfactory; and, in degrees quite various, unreliable. The student should make himself acquainted, at as early a period in his studies as convenient, with the respective merits of these old English reports.

§ 155. The later English reports are more uniform in style and in merit. A statement of the material facts and arguments of counsel in the case is first made, then follow the opinions of the judges who gave reasons for their conclusions. These opinions are not always in the very words in which they were uttered; for, in most cases, they are what the reporter has taken down, in shorthand or otherwise, of language which fell extemporaneously from the lips. But, in some cases, the judge reads from a manuscript of which the reporter is permitted to avail himself; and, in other cases, it is believed, the judge looks over and approves the reporter's notes. The student, however, should consider what court it is whose opinion he is consulting. For instance, the Nisi Prius cases, where the ruling of a single judge at the trial of a cause is recorded, weigh comparatively little in the scale of authority; while, in that of reason, the decisions differ from one another, some being weighty, others light.

§ 156. In the United States, the judges, after hearing a cause, deliberate together, and in private; and, if they agree in the conclusion, some one generally draws up a written opinion, which is read, as the opinion of the whole. In the nature of things, however, the reasoning must be mainly that of the single judge who writes the opinion; and it is a sort of

misnomer to call it, as some reporters do, "the opinion of the court." The conclusion, or judgment, is indeed that of the court, and sometimes, to a certain extent, the whole court actually concur in the reasoning. If a judge dissents from the conclusion of the majority, he sometimes gives his reasons for the dissent, sometimes he does not. And sometimes, when a judge concurs in the conclusion reached by the majority, he dissents from the course of reasoning.

§ 157. The head-note, which generally introduces the report, in smaller type than the rest, and states the points decided, is, in the English reports, the work of the reporter. It is so, also, in the reports of the decisions of the United States tribunals, and those of the most of our States; but, in some of the States, this head-note is the work of the judges. Where it is the former, it is, of course, to be less regarded than where it is the latter. And the student should be cautioned that sometimes he will find the head-note to be utterly wrong; and, as a general rule, he should rely upon it only as an index to what follows in the report itself.

§ 158. The use to be made of reports is matter for consideration further on in this volume. But the student should acquire, at least, a general knowledge of this principal class of law books at a very early stage of his reading. If he is perusing a text-book, he will do well to turn off occasionally, to look at the report of a case cited.

CHAPTER XIII.

LAW TREATISES AND COMMENTARIES.

§ 159. THE words Treatise and Commentary are used nearly interchangeably to designate a peculiar class of law books, now to be explained. Perhaps the word treatise implies a greater fulness in the elucidation of the legal subject treated of, than does the word commentary; and perhaps the latter word involves the idea of more of discussion concerning particular points than does the former. But there is no exact line of distinction to be drawn between these terms when used to designate a book of the law.

§ 160. Next to reports, the commentaries or treatises are the most important depositories of legal knowledge. They differ from digests in this, that, while the latter serve merely as indexes to the reports, or serve only to state what points the courts decided in particular cases, the former unfold the rules, the principles, the reasons, and the true boundaries of rules, principles, and reasons, which not only governed former decisions, but are to govern subsequent ones. A digest may be orderly in the arrangement of its matter, or it may be disorderly; so, in like manner, a commentary may be either the one or the other. But, if a digest goes beyond a bare statement of points decided, it departs from its proper purpose; while, on the other hand, a commentary accomplishes

no part of such purpose unless it passes outside the line of what may be deemed in strictness judicial decision, to unfold those inner principles which perhaps not even the judges saw when they decided the cases.

§ 161. If the reader will turn to the first volume of the author's work on Criminal Procedure, he will there find a statement of the rule and its limits, whereby, and to a certain extent, a case decided becomes a judicial precedent to govern a future case.[1] He will see, in the discussion there given, what are some of the authorities, and the reasons, upon which the doctrine is based. Referring the reader there for the authorities, the author proposes to state it somewhat more simply here. Lord Coke, who, more clearly than any other of the old writers on the law, saw, beneath the surface, the workings of those principles which, like volcanic fires below the crater, throw up to the observation the "points adjudged," — deemed by legal idiots to be the law, — says, speaking of the decision of difficult cases in court: "No one man alone, with all his true and uttermost labors; nor all the actors in them, themselves, by themselves, out of a court of justice; nor in a court, without solemn argument, could ever have attained" to the complete result reached. And in a parenthesis he observes, that, in the court, he is persuaded, "Almighty God openeth and enlargeth the understanding of the desirous of justice and right."[2] This statement, by the great legal luminary of former days, will

[1] 1 Bishop Crim. Proced. § 1030–1047. Also, post, § 450–460.

[2] 9 Co. Pref. Fras. ed. xxxviii.

appear to unthinking men of the present time to be fanatical; but, to those who ponder and to those who know, it will be accepted as a great truth, too great for any age but one of intellectual development and of careful scientific research.

§ 162. The little child looks upon the wonders of nature, yet marvels not, because its intellect is not sufficiently developed to see any mystery where all is really unknown. The philosopher of nature traces what, to the understanding more developed than the infantile mind, is wonderful, to certain great laws of nature which philosophic investigation has discovered, and which are, properly defined, the harmonious method wherein the Creator — or, to use Lord Coke's words, "Almighty God" — develops himself through this part of his works. Now, when we come to compare our world of human mind with our world of material substance, we find that what is true as respects nature is true also as respects human existence, association, and well-being. To the infantile understanding, there is no mystery in this. The papas tell the children what to do, and all goes smoothly in the family. The "great men" who are made our rulers, or who play the demagogue, frame the laws, and tell "the people" what to do, and the affairs of state move on with the axletree of state continually in grease. So think the infantile minds. To minds somewhat more mature it seems wonderful that governmental affairs should go so well when fools are kings and queens; or, in a republic, when men, confessedly almost the smallest in true understanding, make and execute the laws. In our own country,

for instance, no "public measure" was ever known to produce the result which its authors and advocates contemplated and promised. Yet each "measure" produces its truly legitimate result, and the country lives as long as "Almighty God" intends; or, in another form of the expression, as long as the laws of human association, acting on the materials and in the circumstances here existing, prolong its life. To the man of some understanding this seems a mystery; but, to him who has penetrated beneath the surface of things, and discovered how the Infinite works in the realm of mind, the same as the philosopher of nature sees how God works in the realm of nature, the one is as plain as the other.

§ 163. This is not the place to attempt any general unfolding of the laws thus referred to. But to some of these laws Lord Coke alludes in the passage quoted from him. When, therefore, there is a concurrence of all the circumstances essential to a sound administration of justice, — namely, the court sitting with unbiassed understanding to hear the argument, the presentation of argument on both sides by counsel learned in the law, such a constitution of the tribunal as will render its judgment valid and effectual, the aspiration in the minds of the judges after justice and right, and the existence in their minds of that reasonable amount of legal aptitude and learning without which they never ought to have been appointed judges, — "Almighty God" appears in the midst of the tribunal where it sits, and reveals the right way to the understandings of the judges, as surely as he appears in the tempest on the ocean, and teaches

each water-drop where to lie when the wind goes down, so as to produce in the deep the same calm which has gone before in the sky. And, as the ocean-drops do not know the philosophy of this; so, oftentimes, the judges do not apprehend the true reasons of their decisions.

§ 164. Now, if the judges travel out of the record, and undertake to lay down doctrines not necessary to the decision of the cause, "Almighty God" does not go with them there; their words are what are called, in the law books, *obiter dicta*, and, being both uninspired and impertinent, they are of no effect as a guide in future causes. Sometimes, indeed, they are somewhat regarded by succeeding judges; but they do not carry with them, in any proper sense, the weight of authority.

§ 165. Again; if the cause is not argued, or if it is argued by counsel quite incompetent, or by competent counsel whom the interests of the clients compel to present merely distorted or partial views of the law,[1] the case is not one in which all essentials to a sound administration of justice concur; therefore "Almighty God" does not appear to enlighten the tribunal, and the decision is not entitled to be received afterward with the respect due to an authority.

§ 166. It is the same if any other one of the essential conditions is absent. But ordinarily it cannot be known, by any absolute outward test, whether or not these conditions did concur. For instance, no man, looking back into a cause which he sees reported

[1] See 2 Bishop Crim. Proced. § 588 and note.

in the books, can say, from any outward marks appearing on the face of the report, that the judges were or were not "desirous of justice and right;" unless, indeed, they travelled out of the record, in which case he would know that they were neither "right" nor walking in the path of "justice." But if the decision should appear, on inspection, to be palpably wrong, this would show that some one of the conditions, if not more, was wanting; therefore, that "Almighty God" was not in it, and it should not be suffered to control future causes.

§ 167. In order to make the suggestion of the last section available, there must be some recognized test to which we can bring the decision to determine that it was erroneous. If it was counter to the first principles of morality, in a matter in which the standard of morals is the same among all civilized and Christian people, we know it, by this test, to be wrong, therefore we reject it.[1] But if its effect is merely to establish some technical rule, in a case where such rule is not in violation of any principle of morality,[2] and it is not contrary either to any statute or any previously-established course of adjudication, we cannot ordinarily pronounce it to be wrong; we presume it to have been approved by "Almighty God," and thus it stands as authority to guide future causes.

§ 168. There are some other considerations entering into the weight to be given decisions as authority, but the reader will see them stated elsewhere in the course of his studies, and in this volume.[3]

[1] And see post, § 455–458.
[2] See ante, § 13 et seq.
[3] Post, § 450–460.

§ 169. The reader has seen,[1] that it is the orderly and proper course for judges to state the reasons on which their decisions proceed; yet, that this is not strictly necessary, and even a decision may be right while the reason given for it by the judges is wrong. So, we may observe, a case may so evidently proceed on a wrong reason that its legal conclusion will be discredited on this ground. Yet, in general, since it is the duty of the judges, under all circumstances, to decide every case, but it is not so absolutely their duty to give reasons, if there is a discrepancy between the reasoning and the conclusion, we presume "Almighty God" was present in the latter, and absent from the former; therefore we consider the latter to be right and the former wrong.

§ 170. There is, however, a class of legal persons, whose especial duty it is to give reasons. These are the writers of those text-books which are called legal treatises, or commentaries on the law. And we have already seen,[2] that the law itself consists, not in the points decided by the judges in the causes coming before them, but in the legal reasons. These text-books become, therefore, under certain circumstances, authority; and, under other circumstances, they are a sort of *quasi* authority; while, under still other circumstances, very little weight is given them. To explain this more particularly is the object of the present chapter.

§ 171. In the first place, not every book, which claims to be a treatise or commentary, is such in fact.

[1] Ante, § 150, 151, 163. [2] Ante, § 71 et seq.

There is, indeed, a mass of law books, old and new, upon whose title-pages the word "Treatise" or "Commentary" appears, while they are really digests, a class to be considered in our next chapter. Thus, in Byles's "Treatise," as he calls it on the title-page, upon the law of Bills and Notes, we have, in the preface, a statement which, if it is correct, shows the work not to be a treatise, but a digest. The author there says it is "a plain and brief summary of the principal practical points relating to bills and notes, supported by a reference to the leading or latest authorities." By the authorities he means the adjudged cases; and, if a man collects the points adjudged by the court, upon any legal subject, or series of such subjects, and arranges them in an order of his own, whether his collection includes all the points so adjudged, or a selection of them, and refers at each point to the book or books in which the reports of the judgment are recorded, — this is a digest, and it is not a treatise or commentary. It is a mere index to the reports, and it is not, in any proper sense, an authority to be cited in court.

§ 172. But this author adds: "In many cases the reader will, however, find the law laid down in the very words of the judgment [using the word judgment in a loose and inaccurate sense, as signifying, not the judgment itself, but the observations of the judges made preparatory to giving the order to the clerk for the entering up of the judgment], a plan which the author has been induced to adopt, partly that those who may not have ready access to the authorities may be satisfied that the law is correctly stated;

partly because he distrusted his own ability to enunciate, on so complicated a subject, a general rule, neither too narrow nor too wide, beset, as almost all such general rules now are, with numerous qualifications and exceptions; and partly because the language of the judges is infinitely superior to any which he could presume to substitute, remarkable as are many of the reported judgments on this subject in our courts of law, for accuracy, precision, and perspicuity." In other words, this is the author's very frank confession, that, not considering himself competent to write a "treatise," as in the title-page he represents himself to have done, he has digested certain points, and interspersed this digest with a further digest of some of the language of the judges. The work may be a good one; but it is not a treatise, and it is not a commentary. And it cannot be so useful a work as persons unacquainted with the nature of legal subjects would suppose it to be.[1]

§ 173. Books of this general class have been very numerous in all the ages of our professional literature; they have arisen in swarms, have had their day, or rather their night, and, each fading before some new darkness, they have trooped away, like all other shadows, to be heard of no more. In the first edition of the late Judge Story's work on Bailments, we have in the preface the following: "There is a remarkable difference, in the manner of treating judicial subjects, between the foreign and the English jurists. The former almost universally discuss every subject with

[1] See 1 Bishop Crim. Proced. § 1034, 1035, 1073.

an elaborate theoretical fulness and accuracy, and ascend to the elementary principles of each particular branch of the science. The latter, with few exceptions, write what they are pleased to call *Practical* Treatises, which contain little more than a collection of the principles laid down in the adjudged cases, with scarcely an attempt to illustrate them by any general reasoning, or even to follow them out into collateral consequences. In short, these treatises are but little more than full Indexes to the Reports, arranged under appropriate heads; and the materials are often tied together by very slender threads of connection." In some of the later editions, the expression at one place is toned down to read "Practical Works," omitting the words "what they are pleased to call;" but it is plain that this author never regarded such works as practical, or as entitled to be called treatises or commentaries, while yet he spoke cautiously, out of respect to opinions which might differ from his.

§ 174. Notwithstanding the great number of the works which are thus misnamed, our legal literature has contained, from the beginning, more or less works which were truly commentaries and treatises, and these have been augmented by new accessions from age to age. What is the nature of this class of book, appears partly from the foregoing statement, by Judge Story, of the manner in which continental law books are written. The present author, deeming the word "commentary" to be appropriate in the description of his works, placed it on the title-page of his first book, that on Marriage and Divorce; and made, in

the preface, the following explanation: "What is the proper sphere of a treatise, or commentary upon the law, I cannot better express than in the words of Lord Stowell, who, while furnishing me thus a guide for my way, stands also as my apologist and defender against any who may deem the way presumptuous. 'With regard to decided cases,' he said, in delivering one of his most admired judgments, 'I must observe, generally, that very few are to be found in any administration of law in any country, upon acknowledged and settled rules. Such rules are not controverted by litigation, they are therefore not evidenced by direct decisions; *they are found in the maxims and rules of books of text law.* It would be difficult, for instance, to find an English case in which it was directly decided that the heir takes the real, and the executor the personal, estate; yet, though nothing can be more certain, it is only incidentally, and *obiter*, that such a matter can force itself upon any recorded observation of a court; equally difficult would it be to find a litigated case in the canon law establishing the doctrine, that a contract *per verba de præsenti* is a present marriage, though none is more deeply radicated in that law.' What success has attended my efforts to draw from the decided cases the rules to be followed in future causes I cannot assure the reader; but herein, be the success greater or less, lies a chief part of whatever merit is claimed for the following pages. If bare statements of points decided could make up an elementary treatise of the law, little need would there have been for any thing more than a digest of the American decisions, to be used in con-

nection with Mr. Shelford's, of the English. And if treatises of the law were only digests, few treatises of the olden time could have come down to us; for the old would be superseded by the new. And though my work may fail to be regarded in any other light than merely as a digest, the failure will be owing to no want of effort on my part; it will be a complete failure of what I had undertaken, as complete as if the words themselves were for ever blotted from existence."

§ 175. This definition of a legal treatise or commentary, if such it may be called, resting, as it does, on the authority of Lord Stowell, and on the higher reason assigned by him, was put forth also by the author in his other works, to explain and justify their plan of construction.[1] And he is not aware that its general correctness has ever been doubted. Yet, if we look accurately into the subject, we shall find the following definition to be both more exact and more full. A legal treatise or commentary is an orderly statement of those principles in which the law consists, whether drawn from the reports of law cases, from natural reason, or from any other source; accompanied by such illustrations and references to authorities as render them plain in their application, and accurate in their outlines, and settle to the inquiring mind the fact that they are truly the law.

§ 176. It is not possible for the student who is just entering upon his legal course, to understand fully how a law treatise is constructed; for, to do so, he

[1] 1 Bishop Crim. Law, 3d ed. § 508; 1 Bishop Crim. Proced. Pref.

must know also more of the law itself than he does now. But it will be serviceable for him to see, in an illustration or two, something of the process and its results; because he will thus be taught something more than he now knows, both of the nature of the law, and the nature of the books which will chiefly occupy his studies.

§ 177. Let us suppose, therefore, that a legal author is to determine and state to his readers the doctrine upon the question, whether an action at law will lie for a small sum, and how small, and the like. And let us suppose he finds, in the books, the following, and no more; namely, —

1. A decision that a plaintiff, in a case where the defendant has a set-off, may recover a balance of one cent. In giving the decision the court says: "Since the plaintiff has proved a claim against the defendant for twenty dollars, he is to recover the balance due, the same as if there had been no set-off. And, as the defendant establishes his claim against the plaintiff to the amount of nineteen dollars and ninety-nine cents, the plaintiff is entitled to judgment for one cent."

2. A decision, in a case where there is no set-off, that a plaintiff may recover the sum of two dollars. In this case the judge observes: "The sum of two dollars is not sufficient to compensate the plaintiff for bringing his suit, since his lawyer will charge him at least three dollars; but, as he was entitled to bring his suit without the aid of counsel, and I cannot judicially know that his own time would be worth two dollars, I must give judgment in his favor for this small sum."

3. A decision in which the plaintiff was not permitted to recover on a claim of one cent. In this case no reason appears in the report.

4. A decision, no reason being given, allowing a plaintiff judgment on a claim of two cents.

5. A case in which, the plaintiff proving one half a cent to be due, he was suffered to have judgment for one cent; the court observing, — "Since there must be a recovery for one cent or nothing, the cent being the smallest coin now known in our currency, though half-cents were formerly made, he is entitled to have judgment for the one cent, else justice would fail. *Fiat justitia, ruat cœlum.*"

6. A case in which the defendant was shown to have bought an apple worth one third of a cent; there being also proof, supplemental to this, that it is the custom among merchants not to charge, in their books of account, any thing less than one cent. In this case, there was judgment for the defendant, the judge observing: "I am not satisfied that the custom here shown is a good custom; but, if it were, the proof does not meet the point in issue, for there may be a lawful claim where there is no charge in the books. Yet I shall not allow the plaintiff to recover, for I think a third of a cent is too small a sum to render judgment upon."

§ 178. Now, these are mere imaginary cases; but they illustrate what the legal author really finds at every turn, while he is preparing to write, and is writing, a book upon any legal subject. If such author is writing a digest, under the name digest, he states the points adjudged, one after the other, much

as they are stated above, omitting the observations of the court. If he is writing what he calls a treatise, while it is really a digest, he does — nobody can tell what, till it is done. Perhaps he copies "the very words of the judgment," as Byles says,[1] extracted from one or two of the reported cases, but omits the marks of quotation, and lets the subject drop at that; assured of having thereby secured a reputation for great accuracy in his legal writings. Perhaps he strings along the points, one after the other, as in a professed digest, only he makes no division of them into paragraphs. If he wishes to secure the reputation of being a clear-headed author, he states that the law here is a little confused; if he is less ambitious, he leaves the reader to infer that he is confused himself.

§ 179. If, on the other hand, the author is writing what is truly a legal treatise, he sees that in all the cases the judges had confused ideas, and their observations are not worth any thing. But the general result of the decisions appears plainly enough to be, that, though there is a case or two adverse, still, on the whole, there can be a recovery for any sum, however small. The greatest difficulty will attend the class of cases in which less than one cent is proved. In such a case, is it the true rule to give judgment for one cent, or for the fraction of a cent shown, or for nothing? Or, is the judgment to be for one cent when a half-cent or more is proved, and for nothing when less is shown to be due? As this question may

[1] Ante, § 172.

be important, involving thousands of dollars in costs and other expenses of a law-suit, and important as involving various principles of the law, the legal author descends among the principles, ascertains the true rule, and states it plainly and with exactness upon his page. It is the theory of the law that the rule always existed, though it has never been announced; and, in the instance thus supposed, it appears written, for the first time, in the page of the law treatise. The author has *discovered* the rule, — not *created* it, — and he is just as much entitled to the credit of the discovery, as was Sir Isaac Newton for the *discovery* of the law of attraction in nature.

§ 180. In the present instance, let us suppose the foregoing cases real ones, and see if we can find the rule. If, then, with this material, the author were writing a law treatise, the text might run thus: "There are instances in the books, in which the plaintiff has been permitted to recover a very small sum, even as small as one cent. The cases are not quite harmonious upon this point; but the principle appears to be, that, when the plaintiff shows any thing to be due him, be it one cent, or never so small a fraction of a cent, he has put himself in the right, and the defendant in the wrong, therefore he is entitled to recover something. The difficulty is, where the sum proved is less than a cent. In such a case, shall the judgment be for the fraction of a cent, or for a whole cent? That there can be a fraction of a cent appears from various Acts of Congress which recognize such a fraction; and, though the defendant cannot discharge the judgment by paying a less sum than a cent, since the

cent is the smallest piece of money coined, the true course plainly is to enter judgment for the fraction of a cent proved." In the course of this discussion, the author of the law treatise would, moreover, refer to all the adjudged cases, whether favorable or adverse to the view taken by him. He would also refer to the Acts of Congress in which fractions of the cent are recognized.

§ 181. The reader has observed, that, in the foregoing illustration, the writer of the law treatise does not present any of the reasons which had been previously assigned by the judges; and this is because, on inspection, those reasons appear all to be either frivolous or unsound. It is the pleasing duty of such a writer, however, to exhibit, out of many cases which come before him, learned and lucid reasons which have been unfolded by the judges from the bench, sometimes in language whose glowing cadences he transcribes to his page, marking the words as quoted, and giving credit to the particular author of them. In other instances, he finds that the judges have stated reasons imperfectly, but well in part, and here he merely supplies the deficiency. And there are many other ways in which an author weaves what is partly original with him, and partly taken from others, into the fabric of text law; giving, if he is an honest author, every man his due.

§ 182. There is no better place than here to press upon the mind of the student the caution, that, when he sees a question discussed on two sides, whether by judges differing in their opinions as given in the law reports, or by writers of law books, or by anybody

else, he is not therefore to read the two sides merely, and then form a conclusion as to which of the two arguments is the more sound; but, on the other hand, he is to examine the question himself, when, if he conducts the examination rightly, he will be likely to arrive at a result differing from both of the other two, or at one of the two results by an independent process. This caution it is of the utmost importance for the student to observe, not only now, but through all his subsequent studies and law practice. It will save him many a mistake, and it may even prove the road to fortune.

§ 183. The author will illustrate this, by continuing his statement of the way in which law treatises are produced. His first work, that on Marriage and Divorce, appeared about fifteen years previous to the time when this section is written. In the preface he said: "The many conflicts and judicial doubts to be encountered have necessarily increased the size of the volume beyond what would otherwise have been required. In dealing with these questions, I have not always followed the path of argument pursued heretofore by either side to the controversy; indeed it has happened, that, in most of these cases, the truth has seemed to me to lie in a somewhat untrodden way. I hope this will not be regarded as impairing the usefulness of the work; it could not have been avoided consistently with the general plan; and, if I have succeeded in shedding light upon questions of difficulty, it has been in consequence of this method. Truth, distinctly seen, with no shadow of contiguous error upon it, is usually recognized alike by all men; and

the principal reason why differences arise, is because the right view, in the right aspect, with the right surroundings, illumed by the appropriate rays of wisdom, has not been given to the understandings of men." And the soundness of what is thus stated is shown in the fact, that, since the work has been before the profession, the courts have adopted every one of the new methods therein suggested, relating to every important question of difficulty or doubt discussed. If it were not legitimate for a legal author, or for a lawyer practising before the tribunals, to pursue new ways like these, this result could not have followed in the particular instances. And it is mentioned here, simply because there is at hand no other means so adequate to enforce the very important truth just stated, upon the minds of young readers.

§ 184. There is another thing requiring the attention of the young aspirant for legal success; connected, like the foregoing, with the subject of legal treatises. Mr. Hoffman, who wrote a book for students, says: "In a library of only five hundred volumes [a mere fraction of a complete law library], Mr. Park estimates that there are probably not less than 2,625,000 points; and Mr. Preston, in his recent learned treatise on the Law of Merger, computes that his volume contains at least 3,000 propositions on subjects of daily occurrence. Students, therefore, need feel no despondency, when they see learned and experienced lawyers constantly referring to their books, on questions which they are apt to suppose ought to be entirely familiar to them; and the anecdote of the complaint made by his late majesty, George III.,

that 'he had occasion to consult the best lawyers in his dominions, and not a man of them could do more than refer,' is no disparagement to either him or them." [1]

§ 185. Now, these "points" of law are of a nature to be practically reduced to, or merged in, *principles*, so as to become less a burden to the memory than this statement would seem to represent them as being. Thus, if a court decides that there may be a recovery on a claim as small as one dollar; then, that a claim for fifty cents will support an action; then, that an action will lie for two cents; then, for one cent; — here are four distinct points, which are all covered by the general principle, that the smallness of the sum does not take away the right of action. But a digest, as we have seen, must, to be correct, state these points severally, and refer to the several cases in which they were established; while, on the other hand, as we have also seen, a treatise does not state them, but states the principle instead. If, however, we may add, it becomes necessary, in illustration of a principle, to show a point, the treatise mentions the point for this purpose, but for no other.

§ 186. Therefore, to avoid burdening the memory, as well as for various other reasons, the law student should strive constantly to learn the principles, and not undertake to retain in his recollection the points. It is especially necessary that these principles be acquired in their exact outline and proportions; they should be engraved on the tablet of the memory with

[1] 1 Hoffman Course of Legal Study, 2d ed. Adv. xiii.

a precision not marred or left uncertain by the dimensions even of a hair stroke. The breadth of a hair stroke awry in an outline of principle may leave a half million of points on the wrong side of the line; and thus, when the student becomes a practitioner, he will lead his clients astray, and prejudice his own interests as well as theirs.

§ 187. The office of a legal treatise is to draw the principles, so far as the particular subject will admit, with the exactness thus indicated. Sometimes the law itself is found not to be so exact, or not to admit of such exact outline; and, in such circumstances, the page of the treatise must conform to the truth of the law, else it will mislead; and the memory of the student must be a daguerrotype of the fact, else it will conduct him astray.

§ 188. Here, then, we see the distinction between a treatise and another kind of book, not a digest. There are, in our law books, various kinds of maxims, generally clothed in Latin, and for the most part taken from the civil law; that is, the law which formerly prevailed at Rome, and now in the main forms the basis of the jurisprudence of continental Europe. There are various collections of these maxims, the most recent of which is an English work by Broom, entitled "A Selection of Legal Maxims, classified and illustrated." We have already quoted from this author the maxim *Ex dolo malo non oritur actio*, a right of action cannot arise out of fraud.[1] It was the duty of this author, in pursuance of the general

[1] Ante, § 66.

purpose of his work, to explain and illustrate this maxim. But we also saw,[1] that the maxim in itself does not fill up the full outline of our law on the effect of fraud. The author of a law treatise upon fraud, therefore, would not state his doctrine in the words of this maxim, but he would expand the statement just wide enough to encompass the full legal doctrine in exact outline; and, if he did not so, his work would be imperfect; while, on the other hand, the work of Broom is not imperfect by reason of its failing to give such outline. At the same time, the student should impress his memory, not from Broom's enunciation of the maxim, but from the statement of the principle given in the law treatise. If he remembered what was in Broom, and no more, he would be practically led astray; while, if he remembered what was in the treatise, but not what was in Broom's book, he would carry with him the whole law just as effectually as if his memory bore also the words of the maxim.

§ 189. In pages further on, the author will make, to the student, such suggestions as he deems necessary respecting the particular books to be read. But he cannot let slip the present opportunity to impress upon the understandings of his readers the great truth, that, in the nature of legal things, law treatises must constitute the principal source from which students will derive their knowledge of the law. If they go to the digests, — meaning, by a digest, a book which is such in fact, though perhaps called by the

[1] Ante, § 67.

name treatise or commentary, — they will there find mere points; and it is a waste of time, and a perilous tampering with the mental faculties themselves (the latter being a thing much more to be dreaded than even the former), to put into the depository of the memory a burden of points, to occupy the place which should be filled with principles.

§ 190. In the first place, a principle is much more easily remembered than a point. That is, it is so where the mind which is to remember is a legal one; and, if a young man has not a legal mind, he has no business to study law. There are persons who can never comprehend a legal principle, much less remember one; they may find some other useful avocation than the law, and, in some other sphere than this, they may show ability and make themselves respected; but, for them, this volume is not written, and they are not supposed to be its readers.

§ 191. In the next place, a principle, when comprehended and remembered, will render more practical service to its possessor than a million points. The points are special to the special cases. A principle is universal, applying in all cases where its particular nature renders it applicable. A point is a thing of the past, belonging to the history of the law; and in the law it is, as in all other things, an unvarying fact that the past never repeats itself in exact form and substance. A principle, on the other hand, extends equally into the future as into the past. A point cannot govern a new case, such as is every case with which the legal practitioner has to deal; because the circumstances, in which the point arose, never exactly repeat them-

selves. But a principle is just as efficient in the new cases as it proved itself to be in the old ones.

§ 192. It will be worth every thing to the student, in all his future course of study and of practice, if he will now take these views into his understanding, and suffer them to be always present there, and always his practical guide. Let him not be deluded. He may possibly meet with old lawyers, and among them some whose words will seem even entitled to respect, from whom a contrary advice will be given. Young man, your future career will be one of prosperity or adversity, according as you decide this question one way or the other. You have understanding; *exercise it.* Do not follow any advice merely because it appears in print, or because you have respect for the giver. *Think for yourself.*

§ 193. The views here stated accord with the settled opinions and practice of the intelligent members of our profession generally. But the author is so emphatic on this subject, because he sees occasionally the most ruinous counsel held out to young men. A single illustration will suffice to show the need of this warning. Out of the advertising part of the very last number of one of our legal periodicals, the author has just torn a page, the important parts of which he will here insert, for the benefit of his readers: "*Law School of the University of Albany.* — This school now embraces its whole course of instruction within the year, having three terms annually, each term continuing twelve weeks. Three terms complete the entire course of instruction. By continuing three successive terms he may become a candidate for

graduation. The method of teaching is by lecture, examination, and by practice in moot courts. Two lectures are given each day during the term, with the exception of Saturday. These are oral, laying down the most important legal principles, with references to the cases that apply and sustain them. Two moot courts are held each week, at which four students argue the questions that had been previously given out, and two prepare and read opinions upon them. At the close of the argument the question is discussed and decided by the class, the Presiding Professor closing, by giving his views upon the different points involved. The design pervading the entire course of instruction is to fit the student to become an eminently practical lawyer. The accomplishment of this requires the young man to be taught and trained to do that, as a student, which will afterwards be required of him as a lawyer. His reading is not recommended to be elementary books, but the cases that are referred to in the lectures. By these means he learns principles in their applications, and acquires a facility in readily applying them to the facts with which they are in relation. Lectures in the Medical College are open to the law students free of charge. Students are recommended to enter at the commencement of their course of study. The degree of Bachelor of Laws entitles them to admission in the courts of the State of New York."

§ 194. The meaning of all this is, the reader perceives, that, if a young man with no previous legal knowledge will come to this school, he will there be put through a patent process, occupying in all only

thirty-six weeks, whereby, avoiding all reading of text-books, and listening to the lectures of the professors on law, with such medical lectures as he chooses to hear, and reading law cases and attending moot courts, he is turned off a full-fledged lawyer, competent and entitled to practise in the courts of the State of New York. Indeed, he is made "an eminently practical lawyer." If the reader cannot see the absurdity of such a proposal, there is no hope for him. The author remembers observing, in his boyhood, advertisements of travelling teachers of the great principles of the English language, running thus: "Grammar taught here, in six easy lessons." But the professors of this law school have got the start of these their illustrious predecessors. Thirty-six weeks for the law, come much short of the six easy lessons for "grammar."

§ 195. But the patent process! We have seen how the judges decide case after case, often groping in darkness, till, at last, either some judge or some text-writer strikes the principle upon which the cases have all proceeded, and which is likewise to govern all future cases to which it is applicable, and then announces the principle to the professional world. Thus a step in legal science is taken. Then come other cases, then follows the discovery of the principle, and thus is taken another step. In this way, the process goes on. The writer of a text-book, by long and laborious methods, has brought the cases together, has collected out of them and out of the works of preceding authors such principles as had been already discovered, has himself added such principles as he

was able to discover also, has applied his practised mind to the arranging and stating of the principles in the clearest way possible to him; yet, say the professors of the new plan of instruction, "The student, if he would learn fast, should not avail himself of the work which has been done by others for his help. The quick way is for him to do all this work for himself." Now, there have been, before our days, men who have objected to such text-books as were clearly and accurately written, on the ground that they made the study of the law too easy, whereby the student failed to get sufficient legal training and discipline; but the new patent, it is seen, is based on the opposite view of the subject. According to the new doctrine, the quick way to get a house, for instance, is, though you have money, not to buy any thing, or hire any labor, but to go and cut your own timber, and do all the work with your own hands.

§ 196. We have already distinguished between books which are treatises in fact, and those which are digests under the name of treatises. There is still another distinction to be made. A book which is truly a treatise, and not a digest, may be a poor book. Indeed, books of this sort have their grades of merit and demerit, like all other books. The reader, therefore, should not rely on a law book, merely because it is in truth a treatise or commentary.

§ 197. We have already, in this chapter,[1] seen what were Lord Coke's views, adding some views of the author, respecting the elements which must com-

[1] Ante, § 161 et seq.

bine to secure, from the bench, judicial opinions and decisions of the highest order. Now, in the nature of things as they exist under a well-regulated government, the judges must be, as they are, appointed by competent public authority. In the nature of things, however, the writers of text-books cannot be so appointed; for, if they were, we should not have from them often, if ever, works of any superior merit, though doubtless we should have none much inferior to some which are now produced. "Almighty God," who, according to Lord Coke,[1] assists the judges sitting in the courts of justice and there aspiring after truth and right, — assists them, because the aid must be given to the men actually appointed or it cannot be availing at all, — has no occasion, when he selects the instrument for writing a great law treatise, to cull among those lawyers who have won the favor of the governmental appointing power; and observation shows, that, for most great works, in every department, not in their nature requiring governmental sanction, he chooses from among those who bear only his own unseen, and often unrecognized, commission. Thus Hoffman, speaking of the demand for a work of a higher order than any existing one on the Law of Evidence, says: "This is a task to be *assigned* to no man; it is one of those great works which, if performed at all, will be conferred on the world, unexpectedly, by some pre-eminent genius, — a philosopher of a century, who, having conceived a passion for the enterprise, devoted to it a life of toil, research, and reflection."[2]

[1] Ante, § 161. [2] 1 Hoffman Course of Legal Study, 2d ed. 368.

§ 198. The explanation of this is, that Nature, in the material world, and the controlling Mind-principle, in the realm of intelligent existence (the one being in the likeness of the other), have no useless processes; and any attempt, in contravention of this law, to establish a useless process, necessarily fails. There is no need to have persons publicly appointed to be writers of law treatises; the truth which any such treatise bears, is its sufficient authority; therefore, if there were an attempt to produce treatises in this way, it would not result in good. The famous civil-law works which bear the name of the Emperor Justinian are no exception to this proposition; because they were not really original productions, but were compilations made from existing material.

§ 199. Now, in order for what we have just called "the controlling Mind-principle" to produce a worthy legal treatise, it is necessary the particular mind should possess the right natural aptitudes. Then there must be added study and reflection; then, an aspiration after the truth, or, as Lord Coke expresses it, the mind must be "desirous of justice and right;" [1] then, a sufficiently patient and long process of labor in the particular undertaking.

§ 200. In the nature of things, therefore, not every legal treatise, even among those which are produced by competent authors, is a good one. If the author is incompetent, the work certainly fails. If he is competent, yet, instead of being "desirous of justice and right," he is seeking to make the most money

[1] Ante, § 161.

possible out of his labors; or is striving after mere fame, or political promotion, or a college degree; or is seeking to do a favor to a friend, or an injury to an enemy, or to stand well with particular judges, or to gain the praises of a reviewer; or, in short, if any thing occupies in his mind the place which should be filled by the aspiration after "justice and right," — his work will be, in a greater or less measure, a failure, even though he should spend the labor of a life-time upon a single volume. Of course, without labor, there is no fruit in any thing. The celestial forms which walk the earth, under the name of the highest productions of the human mind, are really the progeny of genius married to toil.

§ 201. In the respect of intrinsic excellence, a law treatise does not, like wine, improve by age; while, for most practical purposes, the newer it is the better, because it is more fresh, bringing the law down to the latest date. Still, as regards what is sometimes called its weight in the scale of authority, it does, if it is a good treatise, improve by time; though, if it is a poor one, it drops entirely out of notice. The reason is, that, since its merits are tested in the main by use, these become more and more known and appreciated as years pass away, and the reverence which bows before whitened locks does obeisance to it.

§ 202. Therefore it is, that elementary law treatises — those which are truly such — may always be cited by the practitioner arguing before a court, to sustain the views which he is presenting. But the weight to be given them as *quasi* authority varies greatly. Some of the works of the old masters, as Lord Coke, Sir

Matthew Hale, Blackstone, and others, are regarded substantially as authority; because their books have stood the test of trial and time, and been found to be learned, and usually accurate. No modern treatise can have equal weight of the same kind; because, if as well written, it has not been as well tried. Still a good work of the latter sort is not the less worthy to be read to the judge; since, besides its references to cases supporting its deductions, it carries to the judicial understanding the well-recognized likeness of truth, which answers instead of the outward assurance. Digests should not be referred to, except in rare circumstances of necessity, when access cannot be had to the reports. Some books which go under this name, however, like Comyn's Digest, may be practically regarded and used for this purpose as treatises.

§ 203. The reason why digests are not to be referred to, by the practitioner arguing before a judge, is, that they contain nothing new, being mere indexes to the cases. Always the court should be referred to the original sources, when this is practicable; and, when it is not, as near an approximation to it as possible should be made. A treatise is an original source; because, even where it does not contain the author's discoveries of legal principles, which are there plainly in their original source, it states the old and familiar principles in original language, in new connections, and with fresh illustrations; constituting, in fact, a production just as truly original as is a novel, which aims to present, in a new dress, the old and known in human nature.

§ 204. There are to be found, in the English books,

various dicta from which it is to be inferred, that, in our fatherland, Death has a power unknown in this country. According to these dicta, an elementary treatise of the better class may there be referred to, by counsel arguing before a court, while the writer of it is living, yet not as authority; but, when the writer dies, the book then drops, or rises, into the latter category.[1] This is giving death a sort of legislative power quite beyond the provisions of our written constitutions. The true theory is, not that a text-writer can create law, or that an assassin can create it by taking the life of the text-writer; but that, in proportion as the author's work becomes known for the accuracy of its unfoldings of legal doctrine, the judges, by a law of the mind over which they have not even themselves control, bow more and more to its views, in consequence of which it becomes practically an authority, though it is never such in the very strictest sense of the term. But the mere accident of an author's death can produce no such effect as this upon the mind of any rational human being.

§ 205. There is to be derived, also, from the English dicta, another doctrine unknown in this country. It is, that, if the writer of a book happens to be a judge, or happens to be made a judge after his work is produced, this circumstance gives it a sort of authority which it would not otherwise possess.[2] The absurdity of this doctrine exceeds, if possible, that of

[1] Reg. v. Ion, 2 Den. C. C. 475, 488, 6 Cox C. C. 1, 16 Jur. 746, 14 Eng. L. & Eq. 556, 1 Ben. & H. Lead. Cas. 400; Reg. v. Drury, 3 Cox C. C. 544, 546; 1st Rep. Eng. Crim. Law Com. A.D. 1834, p. 8.

[2] See Ram. Leg. Judgm. 83 et seq.

the last. Even in England, some of the books which receive the very highest respect from the courts are the productions of men who were never in any judicial station; and, among the rest, many, and perhaps the most, were written while their authors were plain untitled members of the legal profession. But the fact that the English judges could make up their faces, in the face of the absurdity of this doctrine, to enunciate it from the bench, shows how place and power love to exact undue reverence from those who chance to occupy seats beneath.

§ 206. Hitherto we have been considering the weight to be given the legal enunciations of a mere treatise. But, as we shall see more particularly by and by,[1] some of the old books which, in one aspect, are legal treatises, are likewise depositories of more or less traditionary law which is not contained in the reports usually consulted. The reader sees, therefore, that books of this class, being more than treatises, are also of greater authority; or, whether of greater or not, they possess also an authority of a different kind.

[1] Post, § 219–222.

CHAPTER XIV.

DIGESTS OF THE REPORTS OF LAW CASES.

§ 207. The course of the discussions of the last chapter conducted us where we had occasional glimpses of the subject of this. A digest of reports is a full index to the points decided in them given in outline; accompanied by such statements of principles enunciated by the judges, and so much of their language, as the maker of the digest deems it wise to include in his work. In the more familiar forms of the digest, the topics are arranged alphabetically; but, in the digests which pass under the names of treatises and commentaries and the like, the alphabetical order is not usually pursued.

§ 208. It is expected that the student, on entering upon his legal studies, will spend some time in looking over a law library; and that afterward he will occasionally, as he goes on with his reading, take from the shelves the various classes of law books, and look into them cursorily, if not minutely. Thus he will learn many things which are better acquired so, than by means of a book like this. Assuming, therefore, that the reader has seen law digests, let us proceed with our subject.

§ 209. Digests, like treatises, are of various merit. A digest, like a treatise, ought to be made by a competent author; yet, in fact, this is a work distasteful

to most persons who are truly competent; the consequence of which is, that we have but few really good digests. Still a poor digest serves an end better than a poor treatise.

§ 210. The following elements are absolutely essential to a first class digest: The decided points should be stated no more broadly than the facts of the several cases reach, however broad may be the words of the judges.[1] The reason is, that he who consults the digest wishes to see in it just what was decided; and, in the nature of legal things, there can be no decision broader than the facts on which it is based. The reporter may, in his head-notes, expand the matter so as to include judicial dicta; if he does, he ought so to frame each note as to make it appear what is dictum and what decision. But, since reporters do not always do this, the writer of the digest should distinguish where they do not. In the next place, it ought always to appear, on the face of the digest, whether the particular point was adjudged upon a statute, or upon common-law principles, or upon the two in combination. It sometimes requires care in the digester to draw this distinction; and, in fact, it is almost never done; still no digest which omits it is really a work of the first class. There is no difficulty in devising a way of expressing this distinction in a very brief form; as, for example, put, in parentheses, the letter C., if the decision was based upon the common law; the letter S., if it was upon a statute; and the two letters C. and S., if it was upon a

[1] 1 Bishop Crim. Proced. § 1034, 1035.

combination of the two. The marks of distinction would stand, in print, thus: (C.), (S.), (C. & S.). So there are various other devices, if this should not please, by which the same result would be reached. Again, the digest, to be of the first class, should be of the first order in point of accuracy, — accuracy, not only in the statements of the points, but in the gathering in of every point, so that no one should be omitted.

§ 211. There are various other qualities which ought to enter into a digest, though they may not be quite so vital as those just mentioned. One is, that, where a judge announces a principle of special importance with special clearness, the digester should state it in brief form, marking it as a *dictum;* thus, (D.). The extent to which this sort of work should proceed, must depend upon circumstances; such as, the particular object of the digest, and the space which it is deemed justifiable to allot to it. A book which the profession will not buy, is of no use; therefore every author, on whatever topic, and whatever may be the style of his work, has properly some regard to its merchantable quality. It is often necessary to make a smaller book than the subject really demands, for the reason that one fully large enough would not be purchased and used.

§ 212. Under some circumstances, it is well for a digest to include statutes with the reports. And always, if the digest is of the reports of a particular State, the digester should note any statute which may have altered the law upon the point digested. If it is certain that the statute has effected the

alteration, he can say so in any plain terms; if there is doubt how this may be, let a *query* point the doubt.

§ 213. It may seem unnecessary to say that every digest should contain an index to the cases digested; for, to most legal persons, this would appear to be a thing of course. There are digests, however, from which this important part is omitted. The omission detracts very much from their practical value.

§ 214. A clear arrangement, an abundance of references from title to title, and a good index of subjects, are likewise important in a digest, the same as in a treatise.

§ 215. Digests of reports are a kind of book indispensable to practitioners. Students should, as a general rule, avoid them; and, if they are ever led to read them, they should remember that they are reading *points*, and not *principles*. To read a digest in the same way as a treatise, is to inflict on the reader, whoever he may be, a positive injury. Hence it is of the utmost importance for the legal reader, whenever he opens any book, to know whether it is really a treatise or really a digest. And there is no greater calamity under which the members of our profession are, as a general thing, now suffering, than the fact that the mass of them do not know what books, of those to be found in their libraries, are digests, what ones are treatises, and what ones, other than reports, are neither. This subject will receive further consideration in some of the future pages of the present volume.

CHAPTER XV.

ABRIDGMENTS, SELECTIONS, AND THE LIKE, TAKEN FROM THE FULL REPORTS OF LAW CASES.

§ 216. In Scotland, they have a book called Morrison's Dictionary, in twenty-two volumes. It is an abridged collection of the reported cases, taken from all manner of Scotch reports, and arranged alphabetically in the order of subjects. This work is so well done, and it is so convenient, that seldom does a Scotch judge or law writer refer to any other source than this, for a decision existing at the time this work was published.

§ 217. If the English reports, from the earliest time down to some recent period, were collected in a similar manner by an equally competent person, the books thus containing them might well, as probably they would, supersede all the old collections for most purposes of practical use. But if the collection were made, as such collections generally are, by some incompetent person, to whom perhaps the work was entrusted by some competent man who lent his name for use on the title-page, the undertaking would be a failure, and the failure would be generally attributed to a defect inherent in the scheme itself. Hence the student should draw the moral, that good plans are unavailing unless they are well executed. Many a young man, if the present volume should be what

publishers call a success, will read it and be no wiser practically than he was before.

§ 218. While we have not, in the English law, any work which exactly corresponds to Morrison's Dictionary in the Scotch, we have a series of old abridgments of a similar nature, though less complete and full, and therefore less useful. Thus it is observed by Kent: "Before we quit the period of the old law, we must not omit to notice the grand abridgments of Statham, Fitzherbert, and Brooke. Statham was a baron of the Exchequer, in the time of Edward IV. His abridgment of the law was a digest of most titles of the law, comprising under each head adjudged cases from the Year Books, given in a concise manner. The cases were strung together without regard to connection of matter. It is doubtful whether it was printed before or after Fitzherbert's work, but the latter entirely superseded it. Fitzherbert was published in the reign of Henry VIII., and came out in 1514; and was, for that period, a work of singular learning and utility. Brooke was published in 1573, and in a great degree superseded the others. The two last abridgments contain the substance of the Year Books regularly digested;"[1] and they "superseded, in a considerable degree, the use of them."[2]

§ 219. After these abridgments came the excellent one of Rolle, in two volumes. It was, like its predecessors, from which it drew, in the Norman French language. It was published under the supervision of Sir Matthew Hale, who wrote for it a long

[1] 1 Kent Com. 507. [2] 1 Kent Com. 480.

preface in English. "The ensuing book," said he, "is a collection of divers cases, opinions, and resolutions of the common law, digested under alphabetical titles, and those titles subdivided into heads and paragraphs." And Bridgman, writing of it, observes: "The more obsolete titles in Fitzherbert and Brooke are omitted; but, besides the printed books extant in Lord Rolle's time, it abridges many of the parliament rolls and other authentic records, and contains many cases that came under the author's own observation when he was chief justice of the King's Bench (during the usurpation), which are not otherwise reported." [1]

§ 220. This work is deemed of high authority at the present day. It has never been given to the public, precisely as the author left it, in an English dress. Yet English translations of it have been made the bases of some other works. The principal of these is Viner's Abridgment, where a translation of Rolle is given in a form of print distinguishing it from a greater mass of material furnished by Viner. Two editions of Viner have been printed in England. It has never been reprinted in the United States. Mr. Warren says it is "a work of stupendous labor and research." It "was published by its compiler, Mr. Viner, in twenty-four volumes folio, between the years 1740 and 1751; and reprinted in twenty-four volumes, royal octavo, in 1792 to 1794, followed by six supplemental octavo volumes in 1799 to 1806." [2]

§ 221. The student is reminded once more, that

[1] Bridgman Leg. Bib. 289. [2] Warren Law Studies, 2d ed. 779.

the present is not a work on legal bibliography; but that he is to collect, from other sources than this, the minute knowledge of law books, and their qualities and values, which he will find essential in the course of his professional career. He will, however, see, from this sketch, that considerable old law, derived from the judgments of courts, has come down to us, not found in the regular reports. At the same time, these old depositories of it would be more serviceable, if they were more purely abridgments, containing less of the mere digest.

§ 222. We see here, also, a further illustration of the fact, that any classification of our law books is, to a certain extent, arbitrary; since many of the books are found, on inspection, to be of the mixed class. Thus the foregoing blend the digest with the abridgment. Then we have, for instance, the book called Bacon's Abridgment, — a work of real merit, — of which Mr. Hoffman truly says: "It is a series of admirable treatises, of an elementary and scientific character."[1] In the minds of most lawyers, also, Comyns's *Digest* is associated with Bacon's *Abridgment*, as a work of a similar class; while neither of these is properly either an abridgment or a digest of the *law reports*.[2] The words digest and abridgment are here used in a somewhat different sense.

§ 223. There are some other works known as abridgments; but what is said in this chapter is intended to convey to the student an idea concerning the general nature of our books, rather than to instruct him in particulars.

[1] 1 Hoffman Leg. Study, 2d ed. 326. [2] Ante, § 202.

§ 224. There are some books which consist of collections of reports on particular subjects, made up from the reports of law cases at large. Such a book is sometimes convenient; still, as a general rule, it is a wasteful expenditure of labor and printing material. Selections of Leading Cases, to which notes are attached, are a class of books to be considered in the next chapter.

CHAPTER XVI.

OTHER LAW BOOKS.

§ 225. On the 17th day of December, 1845, John William Smith, at the early age of thirty-six years, passed away from his earthly life. He had been precocious as a child and as a youth, and had developed mature legal powers long before his end came. "His personal appearance," says his biographer, "was insignificant and unprepossessing. He was of slight make, a trifle under the middle height, his hair was rather light, and his complexion pale. He wore spectacles, being excessively near-sighted, and had a slight cast in his eyes, which were somewhat full and prominent. The expression of his features, at all events when in repose, was neither intellectual nor engaging, but improved when he was animated or excited in conversation. His forehead, however, was, though retreating, lofty, and I have heard it characterized as intellectual. . . . His utterance was slow, his demeanor solemn."[1]

§ 226. While Mr. Smith was getting into practice, after his admission to the legal fraternity, he wrote several law books; and, among the rest, he compiled, in two volumes, a selection of leading cases on various branches of the law, adding, at the end of each case,

[1] Warren's Works, vol. v. p. 65.

notes of his own. This was, at the time of its appearance, a new style of law book. The idea had been suggested by his friend, Mr. Samuel Warren, in the first edition of the work, by the latter, on Law Studies. In the second edition of the Law Studies Mr. Warren says of this book: "It contains seventy-five 'leading' cases; that is, each 'involving, and usually cited to establish, some point or principle of real practical importance,' taken from the reports at large; and each followed by a disquisition, exhibiting the manner in which the principle or doctrine, established in the case selected, has been modified or extended and developed by subsequent decisions. These disquisitions are equally interesting and instructive to one who has acquired sufficient elementary knowledge to appreciate them."[1]

§ 227. This work was so ably done that it received universal commendation; and, of course, the *plan* was as much praised as the execution, for praise is always blind, like fate. In fact, the plan itself was much better than no method for supplying a great professional want. And other authors, of perhaps inferior merit, have followed in the steps of Mr. Smith, producing works on the like plan.

§ 228. The defect in the plan will appear from the following statement, which shows what was and still is the real want of the profession, and by what sort of books the want should be supplied. The principles, which constitute the main body of the law, as has been already explained in these pages, are not, either

[1] Warren Law Studies, 2d ed, 773.

in intrinsic quality, or in the facts of legal science, limited respectively to particular subjects; but, on the other hand, each principle runs wherever its nature draws it, so that the same principle may sometimes be found operating in several distinct branches, or even in every branch, of the law. For example, it is a principle governing every suit at law, that the plaintiff must have merit in himself, in respect to the matter about which he complains, at the same time that the defendant must be in the wrong. Now, this principle runs through the entire law of real property, the law of contracts in all its branches, the law of divorce, the law which is administered in the courts of equity; it runs, indeed, everywhere. And it is the same, or nearly the same, with unnumbered other principles besides. Some of them are, in their natures, of more limited application than others; but the reader has now a general idea of the matter.

§ 229. It is plain, therefore, that there ought to be books announcing the common-law principles, one after another, in as clear and accurate language as their authors can command; followed by short dissertations, showing how they run through the various topics of the law, and what are their respective forces in each. One cannot but wonder that there are no such books; yet there are none. A poor book of this sort would, of course, be worthless; but a truly good book, written by one who was really a master, would be of a value not to be estimated in gold. Mr. Smith, following Mr. Warren, grasped at the idea, but did not quite seize hold upon it. Still the im-

perfect idea, which was seized, has wrought out some excellent results. If a leading case, as it is called, contains a clear enunciation of an important principle, as it sometimes does, it stands, in a certain sense, in place of the author's short and terse statement of the principle; though it is a waste of printer's ink and paper, somewhat worse than needless, to transfer the case bodily from the book of reports to the page of the annotator.

§ 230. But many of the principles of our common law, and among them some of the most important, have never been thus clearly and accurately announced by the judges in any case. A principle of this sort cannot find way into a book of leading cases; yet such a principle requires, more than any other, an author's skill and labor to develop it, and give it form and distinctness, and show its application in the various departments of the law.

§ 231. Something of the sort required had been previously done by various collectors of legal maxims; but, as we have already seen,[1] a maxim is not always as broad as the principle, being sometimes merely a fragment of a principle; and, for this reason, such a collection, though in it the maxims be attended by explanatory notes, fails to meet the want. Such a collection fails, also, because there are many principles which have not been embodied, even in an imperfect way, in any maxims; therefore a book of maxims must be incomplete, as a substitute for the needed book of principles.

[1] Ante, § 188.

§ 232. Besides the classes of books already mentioned, there are works on legal bibliography, on the lives of eminent lawyers, collections of law tracts, legal periodicals, and various others, not important to be further specified here. The law seems to be an immense body, when contemplated in the light of the number of ponderous volumes in which it is to be found; yet, as the student acquires the faculty of consulting the material of this sort, he learns, that, though he cannot carry all in his memory, he can refer to all, and ascertain any one particular for an occasion, much easier than he had at first supposed. Still it requires much toilsome study to become able even to refer to the law; and yet more, to learn to understand it fully and accurately when the reference is made.

BOOK IV.

THE STUDY OF THE LAW.

CHAPTER XVII.

THE PLACE OF STUDY.

§ 233. The foregoing parts of the present volume have made the reader acquainted, in some measure, with the nature of the law, and with the qualifications requisite for its study, together with the sorts of books in which it is embodied or taught. If the young man who has read these elucidations has determined now to study the law, his first question is, whether he shall pursue the study privately at home, or in a law school, or in the office of some practitioner, or whether he shall divide his time between these several places of study.

§ 234. The author had once occasion to consult, on behalf of a young friend, many eminent legal persons, and, among the rest, some professors in law schools, on this subject. And the result was, that almost every one of the persons consulted, perhaps every one, advised, that a part of the time of study be spent in a law school, and a part in the office of

some practitioner. Mere private study, without any help from any source other than the books, would not be recommended by any lawyer; while, on the other hand, no one would doubt, that, at times, private study should be pursued by one acquiring this science, the same as any other.

§ 235. But opinions differ greatly as to how the time should be divided between the office and the law school. There are four ways: one, to enter the law school first, and continue there during a period determined upon, and then finish out at an office; a second, for the student to be connected both with an office and a law school, at the same time, during his entire course of study; a third, to take the office first, and finish at a law school; and a fourth, to spend the earlier and later portions of his time in an office, and the intermediate period, in a law school.

§ 236. Of the four ways, thus stated, the author would choose, for most students, the last; because, if the student should first go into an office, and see how business is there transacted, and go into the courts and observe the course of things in them, he would then be able to give a more practical turn to his reading of the science of the law at the school. But to carry this process to the extent of acquiring all the practical knowledge before he has studied the science would be unwise; because he needs, most of all, to comprehend the mingling of the practical with the scientific, and this he cannot do well, till he has learned the latter. Therefore the third method is not to be approved. Neither is the second; because to divide the time between the office and the school

is to distract the attention too much among differing things and places. The first, — namely, to take the law school at the commencement, — is better far than this; and it is to be chosen in preference to any of the other methods except the last, to which it is not greatly inferior.

§ 237. If young men were machines, and all were to be worked alike, and if there were no difference in law schools and law offices, this chapter might end here. But men differ, offices differ, law schools differ.

§ 238. If a young man has resolved to enter a law school, he should go to a good one, where he will find books enough for consultation, and competent instructors. He should remember especially, that an appointment to a law professorship does not work any transformation in the appointee, so as to qualify him, if he was not qualified before, to impart sound advice to young men, and conduct them wisely in their studies. This is a general hint: it is not the province of this work to enter into the particular merits of the several law schools now existing in our country; and, if it were, there might be material changes in them between the time of the present writing, and the time when these sections will be read.

§ 239. The office-time of the student should be spent in an office where business is correctly done, and where there is sufficient business in amount to give him an insight into the practice in every thing. It should be spent, also, with a master who has both the time and the inclination to explain things to him. This is very important. And the result is, that,

as a general rule, it is not well to seek the office of the practitioner of largest fame; for, as a general rule, such an one is occupied with comparatively a few cases of great magnitude, and he has little or no time to converse with a student. The small cases, especially, do not go to such a practitioner; but these are exactly the ones with which the student must deal, if he deals with any, when he commences practice himself, and he should become acquainted with their management. Learn, young man, to do the little things, and there is no danger that you cannot do the great ones when they come to you. Do the small things really well, and greater and greater will be entrusted to your care, until all your aspirations are satisfied.

§ 240. Again, as to the law school, there are some young men of such mental conformation that they would do best not to enter the school at all. At a school of any kind, there is necessarily a prescribed course of study. And, although it will not harm an intelligent mind to study any thing, or to read the law in any order; yet there are some so constituted that they will reach the end more quickly, and with greater advantage to themselves, if they mark out their own course, and pursue it. Even the particular advice of an eminent lawyer is not always so good for the student as to follow what the "judicious" adviser would term his "own wayward will." The vast majority of young men do best when led by others, because God has wisely withheld from them the faculty to lead themselves. But to those who are by nature qualified to listen to the divine instinct speaking within, and

who are willing to listen and obey, a leader is a great obstruction.

§ 241. Moreover, the teachings, at any school, are almost necessarily such as to suppress, with an equal hand, the ebullitions of stupidity and the coruscations of true genius. Mr. Hoffman, in his work on Legal Study, has even placed it among his "Student's Resolutions" "to avoid all eccentricity, and to root out every idiosyncrasy."[1] The same will be enjoined at the law school, and properly enough so; because, when a stupid young man exhibits his stupidity in a new way, it is offensive; while, on the other hand, it is quite pleasing to see done the common stupid things which we are all performing every day of our lives. If one meets another and observes, what every body sees and knows, "It is a pleasant day," that is a pleasing observation; but, if he looks about and says, as one is reported to have done, "There is a good deal of land around here," he has committed an idiosyncrasy for which he ought to be reprimanded. In a law school he will get the reprimand, and he will deserve it.

§ 242. But, if he utters a great truth in original language, he will deserve no reprimand, yet he will be just as likely to receive it as if he said a new stupid thing in a new and stupid form of words. It will be, in him, an idiosyncrasy. The professor will tell him, it is well indeed to be bright, but he should not be odd. He will assure him, it is a pity that so promising a young man should be spoiled by oddities.

[1] 1 Hoffman Legal Study, 2d ed. 52.

"Beware of the eccentricities of genius" is a caution, the weight of which he will feel at every step.

§ 243. Now, when a wax flower is to be made, the attempt is to imitate some real flower. And, in this way, almost of necessity, the professors of a law school will mould the *wax* in the brains of the young men under them, into something which shall resemble, as much as possible, the actual *caput* of some real or imaginary eminent lawyer. But, when God makes a flower, he gives it a form of its own, differing from every one which ever existed before. So, if he gives one the genius to be a great lawyer, it is the particular genius which he has shaped for the one instance; and its process of development is greatly retarded by any blows from judicious professors, or other "judicious friends," hammering in the proportions which God meant should be extended.

§ 244. There are objections to all schools, legal, scientific, and elementary; and they adhere to the system, and cannot be separated from it. Still, on the whole, schools are good things, because they benefit the majority of learners. But the fact, that, in all ages, the majority of the world's greatest benefactors are not educated in the schools, should convince us that what is best for the mass is not always best for the individual.

§ 245. It may be objected to these views, that the remedy for the evil which attends the admitted good, is to employ men of greater understanding for teachers. But this, in the nature of things, is impossible. Only such men as exist can be employed. Each man has, by the necessary constitution of his nature,

a mental horizon beyond which he cannot see. When, in the presence of such a man, a child of genius throws up a coruscation beyond such horizon, he can "hear the sound thereof," but he cannot see the blaze. Hence he deems that an idiosyncracy is outcropping, and he admonishes the pupil.

§ 246. Let not, however, too great weight be given to these observations. As a general thing, it will be well for the student to spend a part of his time at a law school; and, if he has genius, as most have not, these hints will help him to resist the suppressing process, and at the same time teach him charity toward those who are engaged in it. True wisdom, like the bee, draws nutriment from every flower, but rejects what of the flower is not adapted to the end.

CHAPTER XVIII.

THE BOOKS TO BE USED IN LAW STUDIES.

SECT. 247–249. Introduction.
250–277. How the Qualities of Books determined.
278–312. Concerning some particular Books.
313–317. Concerning a prescribed Course of Study.

§ 247. THE importance of the subject of this chapter, to one seeking to become an accomplished lawyer, is very great; it cannot, indeed, be over estimated. If, for instance, the student is set to reading books which are mere digests, — or, in other words, books of mere points, whether the books are called digests, or treatises, or by whatever other name they may be known, — he learns, in truth, no law whatever; because the law does not consist of points, but of principles. So, if he reads books containing principles incorrectly or imperfectly stated, he fails to acquire that exact legal knowledge without which he cannot rise to any true eminence in his profession. Again, if a book does state the principles, and state them correctly, still, if it is the production of a flabby, lack-vigor brain, it will impart something of its own inferior nature to the mind of the reader, and the latter will be thereby, in some sort, weakened and deadened in its action.

§ 248. If, on the other hand, the book embodies the principles of the law, clearly and accurately enunciated; if it is the offspring of a highly vigorous in-

tellect, — if it awakens the thinking powers of the reader, and keeps them ever active and ready for great enterprises, — if it inveigles him now and then into a wrestle of intellectual strength with itself, or with some book of reports, or with some elementary book of reputed high standing, — if, in short, it sends its galvanic currents along with accurate legal wisdom wherever its pages are opened, it does its part toward giving the student the peculiar intellectual development and force which, when made mature by study, by exercise, and by time, constitute the great lawyer.

§ 249. This chapter will be divided into three parts: I. How the Qualities of Books are to be determined; II. Concerning some particular Books; III. Concerning a prescribed Course of Reading.

I. *How the Qualities of Books are to be determined.*

§ 250. Publishers of law books, as well as of other kinds of books, are in the habit of sending presentation copies to the editors of such newspapers and periodicals as it is presumed may notice them favorably, and as have also a circulation among the class of persons likely to become purchasers. In this way, they make their books known, if nothing more. And, as mere matter of advertisement, the plan is excellent. But it is important to state to the young reader, what is known to all veteran lawyers acquainted with this plan of advertising, that, as a general rule, to which indeed there are exceptions, no reliance whatever can be placed, by the reader desiring accurate information

regarding a book, or its qualities or merits, upon notices or reviews so obtained, whether appearing in the ordinary publications, or in the legal periodicals. This is the condition of things in our country now and for as long a time back as the author's knowledge of the subject extends; he does not prophesy concerning what may be in the future.

§ 251. There are various reasons for this. Thus, there may be a rivalry of interests among publishers or authors, and this, or some other motive equally unworthy, may inspire an unfavorable notice of a book, which the writer of the notice thus strives to put down. But in most cases no such rivalry exists; or, if it does, no such motive inspires the notices. If gentlemanly publishers, contributing to the advertising column, have politely furnished an editor with presentation copies, it would be unkind in the latter not to return the compliment by a puff; yet, since all human productions are imperfect, being the offspring of finite creatures, the puff tails out with an "if" or a "but," by way of exception, as well as by way of keeping up the puffer's character for impartiality. And no one can say that what is thus stated of a book is not, as respects the general result of praise and blame, on the whole just; for every book is good for something, — it is useful as furnishing paper rags if nothing else, — and every book has its weaknesses and defects.

§ 252. Another cause is, that, for reasons not necessary to be entered into here, the professional mind, in this country and in England, but especially in this country, has not been much directed to the question

of the elements which constitute the good and the poor books respectively, or the qualities which render a law book really useful or really useless. The consequence is, that, when in some exceptional instance a book notice is written by some really able lawyer who has read the book he reviews, he, pressed with professional business, and giving no particular attention to the great question of the essentials which make a law book useful, states the result of his judgment in a manner which imparts little valuable knowledge to the reader. But how many books are read before they are reviewed? And how many are reviewed, if they are read, by persons who have any real knowledge upon the subject of law books generally, or upon the particular legal topic to which the book reviewed relates? If we may judge from what appears, in the legal and other periodicals and elsewhere, under the heads of Notices and Reviews of law books, we must conclude that seldom is a book read before it is noticed, and seldom is a notice written by a person really competent to perform this particular service.

§ 253. The author remembers, that, in the days of his boyhood, there was once read in school a first effort at "composition," which brought down alike the applause of the boys and the frowns of the master. It was entitled "A good Sheep," and it commenced thus: "A good sheep has four legs, two behind, and two before." This description of a sheep is precisely what is generally given us of a law book which we find reviewed. Thus: "It is a good book. We thank the learned author for producing it. We thank

the publishers. We are glad it has appeared. It has an index of cases. It has a good general index. You can refer from one part of the book to another. We like it. We wish the author had come to us for advice; it would not then have had some minor imperfections, which we discover. The book is too good to have been written except under our special direction. We know more than the author, of course; but the book is good; glad of it; we shall put it upon our shelves."

§ 254. In a late number of the North British Review, there is an article upon American Literature; and in it occurs the following passage: "The Authority, which is the guide of old nations, constantly threatens [among them] to become tyrannical; they wear their traditions like a chain; and, in the canonization of the laws of taste, the creative powers are depressed. Even in England we write under fixed conditions, with the fear of critics before our eyes; we are all bound to cast our ideas into similar moulds, and the name of 'free-thinker' has grown into a term of reproach. Bunyan's 'Pilgrim's Progress' is perhaps the last English book written without a thought of being reviewed. There is a gain in the habit of self-restraint fostered by this state of things; but there is a loss in the consequent lack of spontaneity; and we may learn something from a literature which is ever ready for adventures. In America the love of uniformity gives place to impetuous impulses, the most extreme sentiments are made audible, the most noxious 'have their day and cease to be;' and, truth being left to vindicate itself, the overthrow of error,

though more gradual, may at last prove more conclusive." [1]

§ 255. Whatever truth there may be in these observations, as applied to general literature in England and this country respectively, it is not in either country precisely as the writer states, with regard to the literature of the law; of which, however, he was not particularly speaking. Thus, though there may be authors foolish enough to write law books with the fear of the reviewers before their eyes, there are no reviewers, or nearly none, who have any "laws of taste," wise or unwise, canonized or not canonized, or any other "laws" of framework or filling up, of method or of substance, by the application of which to determine the qualities of the book reviewed. Or, if any have such "laws," they will be found, as a general rule, to which indeed there are exceptions, to be either worthless or absolutely vicious and bad.

§ 256. For example, limiting our observations now to our own country, among the canons of good authorship, as the author remembers to have seen them stated in some exceptional instances in which the reviewer seems to have been guided by canons, it has been mentioned as a great excellence in the book reviewed, which was a treatise, that the authorities had been industriously collected and methodically arranged, — "And what more," inquires the reviewer, "can we ask of any legal text-books at this day?" In like manner, where the book reviewed was a digest, the reviewer, in an ecstasy of admiration, ex-

[1] 46 North British Review (June, 1867), 486.

claims, in substance: "This digest is as methodical as a treatise; and the only thing which distinguishes a treatise from a digest is, that it arrays the decided points in a logical order, which the digest does not always do!" How far such expressions are from all true canons of criticism, the reader will perceive on considering the purposes of a digest and of a treatise respectively, as explained in our chapters on those subjects.

§ 257. There is nothing which the professional reader so much needs to know in advance, as, whether the book he is about to take into his hands is really a treatise, or really a digest, or a mixture of the two, or neither. And these are matters on which the authors unhappily do not themselves, in all instances, inform their readers; or, if they state what the fact is with regard to their books, the statement is not always quite reliable. It has become so much in vogue to call any book a treatise, which undertakes in any way to be helpful to lawyers, and the distinction between it and a digest is so vital, that no review or notice accomplishes its true object, if it is not clear and precise on this question.

§ 258. What, then, are some of the true canons of criticism, by which to determine the qualities of law books? One is, that, if the work is a treatise, it shall give the outlines of the various legal principles enunciated, with entire precision, drawing each stroke in its exact place, precisely where it exists in the unwritten original, of which the treatise is the written representative; while, if the work is a digest of the decisions of the courts, it shall draw each of its propositions exactly

commensurate with the facts of the cases out of which the propositions are taken, as the results of the respective adjudications. In the one instance, the lines are drawn where the unwritten law draws them; in the other, where the facts involved in the reported case, and the conclusion arrived at by the court, place them. In the one instance, again, the thing to be stated by the author is a legal principle; in the other, it is a determined proposition, or a point, in the law. These distinctions were particularly mentioned in previous chapters, and they should be constantly borne in mind as constituting one or more of the canons of criticism.

§ 259. The result is, therefore, that no person can truly estimate a law book, until he first ascertains whether it is a treatise or digest. Suppose, for example, you open the book, and there you find an enunciation of legal doctrine; if, waiving the question whether it is a principle or a point, you find a case referred to, and the facts of the case appear on examination not to be so broad as the proposition in the book, you know you have detected an imperfection, provided the book is a digest. But if it is a treatise, or commentary, and the proposition is a legal principle, you know, that, of course, it is not and cannot be supported in this way by any case or any number of cases; because cases do not, *in this way*, support *principles:* they thus sustain only *points*. If a stream rushes down hill to-day, the fact that it so rushes is a point in its history; if it did the same thing yesterday, there is another point; and a point of this sort may be obtained every day or every minute.* Then, if the

red apple which you now hold, falls when you let go of it, here is another historical point; if the white sour apple did the same thing yesterday, you have in this fact yet another point; and, if the sweet white apple conducted itself in the same way the day before, it gave you thereby still another point. Collecting together a sufficient number of these points, you become qualified to discover over again Sir Isaac Newton's great *principle*, or law, of gravity. But you do not judge of a book written in demonstration of this principle, — analogous, therefore, to a law treatise, — in the same way as of a book written to portray the meanderings of streams, and the dropping and gathering of apples in autumn, — which book is analogous, consequently, to the law digest.

§ 260. A treatise, like a digest, must be accurate. It must state the law as it is, not as the author thinks it ought to be. But the lines of accuracy run, as the reader sees from these observations, not at all in the same way, or after the same sort of fashion, in these two classes of books.

§ 261. Let us, in illustration of these views, consider the nature of definitions, as they are called in law treatises and law dictionaries. A definition is a brief enunciation of the law governing a particular subject, or branch of a subject, known by a particular name. Thus, the law of contracts is, in outline, stated in the definition of the word contract. The law of bailments, being a subdivision of the larger subject of contracts, is, in the definition of the word bailment, stated with greater or less fulness, according as the definition itself is more or less complete.

Out of mere definitions, therefore, if they are accurate, can be drawn a vast amount of law.

§ 262. But, in the nature of legal things, a definition can never be established by adjudication. The absolute truth of this proposition appears, when we consider, that the object of every law-suit is, so far as the law of the case is concerned, to determine the rights of the parties as growing out of certain admitted or proven facts. But facts, as shown in a court of justice, are just as variant in nature from a definition as is a triangle from an emotion of the mind. There is no concord, or harmony, between the one and the other. Yet, though a court cannot adjudge a definition to be so or so, it may, in assigning reasons for its judgment, take into the account its idea of the true form of a definition. In other words, the judge, in giving the opinion of himself and his brethren upon the law as applied to the facts, may state what he and they deem the true definition to be; but this statement is a mere dictum: it creates no law, it is of no higher authority than are similar statements made by text-writers, and indeed it is not so likely to be found correct as theirs. It cannot properly appear in a digest, unless the digester chooses to mention it as a mere dictum. If this were otherwise, and the enunciation of the definition made it authority, then the courts would legislate, as well as decide causes, contrary to the provisions of our constitutions, which place all legislative power in the hands of the legislature.[1]

§ 263. On the other hand, though a definition can-

[1] 1 Bishop Crim. Proced. § 1030, 1031.

not be created by a power not legislative, yet, since definitions constitute parts of the unwritten law, it is the duty of the text-writer to draw them out from the unwritten mass, and embody them as clearly as possible in words. If, therefore, we would test the merits of a treatise or commentary, we can do so in part by considering how accurate or defective are the author's definitions. This is a question to be settled, not by reference to particular decided cases, or to the books of previous authors, but by comparing the definitions with the more full statement of the whole law covered by them. An author may adopt another's definition, the same as he may adopt another's language in any other part of his work; but here, as everywhere else, he ought, if he does, to include the borrowed words in marks of quotation. If no such marks are given, and there is no statement that the words are borrowed, then, if we would look into the qualities of the book, we must inquire whether the words are in fact borrowed, or whether they are truly original, as they purport to be.

§ 264. The necessity for this inquiry will appear from the following propositions: In the first place, if we find in the author a disposition to appropriate another's labors to himself, without giving credit to the source on which he drew, we discover in him such a want of uprightness of mind as leads us to question his powers; for, as we saw elsewhere,[1] "Almighty God" must lend his aid to the author, or the work will be wanting in true legal wisdom; but he helps only "the desirous of justice and right," which

[1] Ante, § 161 et seq., 197 et seq.

such an author is not. In the next place, if, as is apt to be the fact, the definitions already appearing in the books are quite defective, and the author has adopted them without curing their defects, we discover in the omission a want either of the needful ability or the needful disposition to labor. And, in the last place, we know that the making of a treatise upon any legal subject is a work which cannot be conducted all through by the power of literary larceny; and we tremble for the yet unexplored parts where real ability must be shown, or the work will be very defective.

§ 265. Now, as a general thing, the reviews of law books given in our various publications, legal and otherwise, do not go into questions of this sort; hence the readers of such books must look into them for themselves, or they will have very imperfect ideas of the merits of what they read. And let it be remembered, that this mention of the definition is made only by way of illustration, and that the principle involved in the illustration applies to every part of a legal treatise.

§ 266. We have already seen how to determine the accuracy of a definition; namely, to compare it with the more extended statements of the law, made by the author, or by other authors. It is not quite so easy, in most instances, to ascertain whether other original enunciations of legal principle, made by the author of a law treatise, are accurate or not. If the author expands a subject considerably, and gives us the processes by which he has arrived at his conclusion, we can travel over the ground with him, and judge

as he judged, whether or not the conclusion is sound. But, if an author at all prolific in his discoveries of principles were to do this as often as he made an original statement of a principle, his book would swell beyond the capacities of publishers and of purchasers. It is not, therefore, possible that this should be; neither, on the other hand, ought the reader to take any thing from any author on trust. Practically, most readers of a new book pronounce erroneous every thing in it which they cannot see to be true, and approve of every such thing in an old book.

§ 267. A wise reader, however, will, in the first place, satisfy himself whether the author he is examining has legal capacity. If found to be wanting here, he will reject him at once. He will next inquire, whether the author possesses honesty in his avocation; for, if he finds him appropriating the labors of others without credit, or puffing unduly and at all times some judge or court or legal periodical or high personage whose rocky crest is expected to cast back the echo of praise upon himself, or if he finds him suiting his doctrine to some popular breeze instead of the established law, he will know, that, though the book may contain more or less good and smart things, and things not unadapted to bring money to the writer's pocket, and fame to his brow for the moment, it is not a production in which, to employ again Lord Coke's words, "Almighty God openeth and enlargeth the understanding of the desirous of justice and right."[1]

[1] Ante, § 161, 197, 264.

§ 268. If, in the next place, the book stands the tests thus applied to it, he considers that it is not impossible a particular proposition may be sound, though it should not accord with his pre-conceived opinions. If the author has referred to cases to sustain the proposition, he looks into them. Should the proposition happen to be only a point said to have been decided in the cases, this examination, of course, settles at once the question whether the proposition is correct or not. But should it be an enunciation of a legal principle, the cases may not, though again they may, absolutely establish it as they appear to the examiner on first presentation.

§ 269. Here the reader is to note, that the examination is to be of the *cases* cited, not merely of a single one of several such cases; for often a text-writer cites to a proposition several cases, neither one of which, confessedly, sustains it in full, while all, in combination, plainly do: just as a single apple may not fill your basket, while a pile of apples lying by crowds it to its utmost capacity.

§ 270. But if the cases, even thus examined, come short of sustaining the proposition, it may still be found just, when the context, the contiguous principles, and the larger doctrines pervading the entire subject, are, with these cases, all taken into the account. They are things to which the author could not refer in his note; but, not being able so to refer, he makes simply such references as the nature of the matter permits, then, considering that he is addressing intelligent readers, who are familiar with the principles pervading other legal subjects, and who have read or

will read his entire book before condemning a part, he trusts himself to their good discretion and to time.

§ 271. The reader of such a proposition, therefore, if he yet lacks the acquirements necessary to pass upon it, holds his opinion in suspense until he becomes able to frame an intelligent one. If he has already the necessary acquirements, he probably settles the question in his own judgment at once. And, if we consider simply what is *probable*, as men are, it is probable that the most superficial and least qualified will be the first to leap to a conclusion.

§ 272. Having thus started with a single canon of criticism, and continued the discussion until several others have been mentioned, let us consider a particular matter over which multitudes stumble. It is known to all of us, that, when an inventor in the mechanic arts has, at a blow, struck the highest note in the scale of perfection, beyond which there lies nothing, the discovery appears simple, quite within the capacity even of a babe. Thus it is, also, in many other things; and, among these other, is the law. A practitioner, presenting to a court a cause involving great principles, strikes, if he is on the right side and strikes the highest note, the blow which carries away his opponent's foundation and wins his case, with as much apparent ease, and often as quickly, as the boy casts his marble. It is so, likewise, with the writer of a law treatise. Those things which are the most valuable in a meritorious treatise are, as a general truth, such as are taken by the mass of readers to be merely as of course, or are even despised by them as being

too simple and elemental to appear in grave and solid pages.

§ 273. If the author presents here to his readers the most apt illustration which occurs to his mind, he will be reproached by some as exhibiting himself rather than his subject. If he omits to do this, he will fail in his duty, which is, to urge important truths with the utmost force of illustration at his command. He chooses, therefore, to avoid the latter. In passing through the press one of the early volumes of his books, he had the good fortune to have the proof sheets looked over by a legal friend of great ability and eminence, who made to him such suggestions as occurred, by way of correction or otherwise. As the successive forms came from the press they were also read by one who had no legal knowledge. After perusing a certain form of several pages, the latter reader observed: "This is very simple matter for a law book, any body knows that what you say here is so. Why do you not get up something great, and astonish people, and make your books famous?" When the same form had been read by his legal friend, relating, as it did, to a topic which the latter had encountered in the course of his professional career, he handed it to the author with observations not proper to be repeated in this place, expressing of it an opinion quite as high as that of the other reader was low.

§ 274. And such is the general truth. No one, having occasion to pass through an entanglement which he never encountered alone, can follow a guide who quietly presses aside brier and bush, and without

seeming effort opens a path as smooth as a highway through the place of difficulty, without failing, more or less, to appreciate the service done for him. Yet, when we examine the legal production of another, we should bear this truth in our minds, and let it do whatever work it legitimately may in the formation of our final judgment.

§ 275. Of the minor rules of criticism to be applied to a law book, it will be well to mention one or two. The division of a subject should be regulated by the nature of the material to be worked up in the discussion, rather than by any abstract idea of the intrinsic propriety or convenience of one method or another. Thus, if the subject is attended by questions of conflict or difficulty, perhaps, by arranging the matter in a particular way, those questions will nearly or quite solve themselves when approached by the chosen path; while, if they were reached from another direction, they might cause the utmost embarrassment. And there are various other considerations of the like kind. Therefore it is *not* a just canon of criticism to approve or condemn the arrangement of a law book, especially of a law treatise, by appeals to any imaginary standard of philosophical propriety, or any other of the like sort.

§ 276. As to style, the quality essential always, to which all other qualities should be sacrificed, may be termed *transparent precision*. Every line of thought should be so drawn that the reader cannot mistake where it lies, and it should be laid with the exactness which the mechanic uses in the construction of the most minute mechanism. To this quality of

the style, any thing else, which is good, may be added; but nothing more need be mentioned here.

§ 277. Many more things, coming properly under the present sub-title, might be said; but it is deemed best not to pursue the subject further. The subject, however, is one of such vast importance, that any length of the discussion, if it should awaken attention in the professional public, would be compensated for by the good results following.

II. *Concerning some particular Books.*

§ 278. What is proposed, under the present sub-title, is to give the student a few hints respecting some of the works, by deceased persons, usually or sometimes recommended to be read by him, for the purpose of acquiring legal knowledge. The discussion is limited to the works of authors deceased; because, their race being ended, their place in legal history is permanently fixed, and because it is not always pleasant to say just what perhaps ought to be said of the production of one who is moving among us, and whose work may be greatly modified in a subsequent edition. Of works of the latter sort it is believed that the suggestions contained in the course of this volume will enable the student to judge for himself. And, it should be remembered, that there is no intellectual exercise better adapted than is the process by which such a judgment is formed, to strengthen the legal understanding, and fit it for the duties of the practising lawyer.

§ 279. A single word further, however, with regard to living authors, may be well. The light has not

faded out from our living jurisprudence; and there are works of to-day which will survive until to-morrow, the same as there are works of yesterday which are vital powers in our law to-day. It is not, therefore, to be inferred, from the author's course under the present sub-title, or from what is said in the last section, that he disapproves of the use of any one work, now employed in law studies, which is the production of a living author. And if it were really deemed best for the reader that he should be more specific, he would be so here, regardless of personal feelings or wishes. But the exercise of judging of a part of the books for himself will be more serviceable to the student than would be particular hints given here; and, since this is so, it is best he should take for this exercise those which are the productions of living men, because they are changing, while the others are permanent.

§ 280. *The Works of Coke.* — The date of the birth of Lord Coke is left by his biographers in some doubt, but it was sometime between the latter part of 1549 and the early part of 1551; most likely, during the year 1550.[1] He was baptized Feb. 8, 1551.[2] He was a man of wonderful legal powers, as nature made him; and he cultivated his powers, both by study, and by an exact following of the light of the law, as it shone upon his understanding, during all his long life. He was not, indeed, a perfect man; for, as attorney-general, he was sometimes very ar-

[1] Woolrych Life of Coke, 17, 190 and note; 1 Johnson Life of Coke, 8, 9.

[2] 1 Johnson Life of Coke, 9, note.

bitrary and even cruel in his dealings with prisoners; and, as judge, he sometimes made them feel the weight of a sort of persecution from the bench. Moreover, he fawned before power in order to obtain the favor of his sovereign. But in all this he never, or nearly never, bent the *law* to secure any private end; and, as we contemplate the firmness and uprightness of his position in this respect, in connection with the general debasement of the age in legal things, and the special forces employed by power to turn him away from what the law demanded, the mind is filled with an awe such as when we see a tall rock lifting its head among the breakers on a stormy coast, and not even nodding while it spurns and casts back the angry surge. His great contemporary, Bacon, was among the slush and froth that licked and spewed to the breezes which blew from the throne.

§ 281. The consequence is, that, while Bacon, with vast abilities, produced nothing of much value in the law, Coke became a great power in jurisprudence, whose throne endures even to the present day. Coke, moreover, was, in a certain sense, a founder of British liberty; but, if Bacon's nature had been infused into all the men who stood in high places, Liberty would have been bound hand and foot, and consigned to outer burnings. Yet, though Bacon was false to the law, he was true to Science, and Science has ever loved to cast flowery wreaths upon his grave. Thus it is that God, out of pity for the weaknesses of his creatures, allows faithful services to be rewarded, though performed by those who are faithless with regard to other things. And he even condescends to help those

who are faithful in the particular department, though faithless in other departments, — with a less perfect help, however, than he gives those who are faithful in all.

§ 282. The legal labors of Lord Coke wrought a great reformation in the habits of legal thought; at the same time that they were in the highest degree serviceable by reason of the actual information which his writings conveyed to their readers upon questions of law. In every respect, therefore, Coke was a power in the English jurisprudence. With him opened a new era in the English law. And, at this day, the students of our law, whether in England or the United States, seldom consult legal writers of a period earlier than his.

§ 283. Littleton, however, whose "Tenures" served as the framework whereon Coke wrought the Commentaries which are sometimes known as his First Institute, was of a period somewhat earlier, and the Tenures are still read and admired as a part of the book entitled "Coke upon Littleton." The date of his birth appears not to be accurately known; but, having lived to what Coke calls a "great and good age," he died Aug. 23, 1481. His Tenures are supposed to have been written toward the end of his life; they were certainly not published until near its close, if indeed they were until after his decease.

§ 284. The Tenures of Littleton are a very methodical work, concise in style, admirable in every respect. Coke, in commenting upon them, was necessarily rambling and irregular. He has been, by many, much censured for this, as a fault. But it is difficult to see

how it was otherwise than inseparable from his plan. Doubtless, if he had written an entirely original work, he would have better served the profession; but his reverence for his master, Littleton, appears to have been so great that it would have been distasteful for him to do this.

§ 285. The chief works of Lord Coke, other than his Reports, are his Institutes, in four parts. The first part consists of the Commentary upon Littleton, just mentioned. As it appears in the later editions, there are attached to it notes of great value by Messrs. Hargrave and Butler. The old spelling and the old punctuation are retained; and, cut up as the work now is with note upon note, it is, on the whole, repulsive to the reader.

§ 286. There ought to be published a new edition on the following plan: Let the spelling be made to conform to modern usage; also the punctuation. Neither of these is essential to be preserved in the old form, in order to do justice to the author. Then let there be run into the text, in brackets, such editorial signs as will admonish the reader when he is upon obsolete law, and when upon law which has been changed by subsequent judicial determination. Various other things of the sort might be done, to render the work more readable, more instructive to the modern inquirer, and more serviceable every way.

§ 287. This work treats mainly of the law of real property; but there are also found in it many things pertaining to other departments of the law. Very much of the old law of real property is now obsolete even in England, and still more of it is so in the United States.

Yet there extend all through the work *principles* which are living powers in the common law, as everywhere administered at the present day.

§ 288. This Commentary upon Littleton was, with the text, intended by Coke to be read as a first book by students. It was so used for a long time, almost universally; and even now it is by many recommended to be read, though not generally as a first book. The author of the present work will suggest, that, if a student has capacity such as every law student ought to have, he can, after acquiring some preliminary legal knowledge, profitably pick his way through this work, reading a part and omitting a part, just as his own judgment shall dictate. If it were edited in accordance with the foregoing suggestion, this picking the way would become very easy, and much more profitable than now.

§ 289. Two editions of Coke upon Littleton were published during the lifetime of the author. But the second, third, and fourth Institutes appeared as posthumous works. These do not require to be read by the law student, though every lawyer should have them in his library. The second is an exposition of Magna Charta and many other ancient statutes. It is in two volumes. The third, in one volume, is upon the criminal law. The fourth, in one volume also, is upon the jurisdiction of courts. No one of these has a reputation equal to the First Institute, usually termed Coke upon Littleton.

§ 290. Coke's Reports have already been mentioned in these pages.[1] Hoffman, in his "Course of

[1] Ante, § 150, 153.

Legal Study," strongly recommends the reading of selected cases from them. For this purpose, he has made a selection, not deemed necessary to be repeated here. He says, in the "Advertisement" to his second edition: "No part of the Course is of more value to the student than the selected cases in Lord Coke's Reports. We mention this, *in limine;* because we have remarked that many students, from very erroneous impressions, have shrunk from this portion of their prescribed course; and because we have uniformly found that students who have diligently read these cases, with the added references of leading cases from Lord Coke's time to the present day, have expressed the greatest satisfaction at the result, and have even dated it as the period of their triumph over the perplexities of their novitiate."[1]

§ 291. There is great force in this statement. Yet it is believed that the following will be found to be more accurate, as a delineation of the general fact. The perplexities of a student's novitiate will last just so long as he remains in ignorance of the sort of thing which the law is, and how it comes to us, and how legal doctrine is extracted from cases, and the like, — in ignorance, in other words, of those truths which it has been the purpose of the present work to teach in the foregoing pages. Now, there never was an author, upon any subject, who had a deeper or truer insight into the inner mysteries of his own science, who saw more clearly those things which the intellectually blind cannot behold, than Lord Coke. And no

[1] 1 Hoffman Leg. Study, 2d ed. Adv. xv., xvi.

student of the law can be expected to get over the difficulties of his novitiate until he has read some author who can conduct him, and does conduct him, where he sees these things. If this end cannot be obtained by the use of more modern books, by all means send the student to Lord Coke's Reports. And, if it can be so obtained, still it will be serviceable to every student to have some intimate knowledge of this series of most admirable storehouses of legal wisdom. It is hardly necessary to select the cases for him; let him take the books, and examine for himself.

§ 292. *Cruise's Digest.* — We have already seen,[1] that books which are truly digests — that is, digests of the reports — are not suitable to be read by law students; yet, that a book may be called by the name digest, while in the quality of its matter it more or less resembles a treatise. The book known as Cruise's Digest really mingles something of the treatise with the matter which more legitimately falls within the meaning of the title. It treats of real property, not of personal. Hoffman says: "Mr. Cruise's Digest is principally remarkable for the perspicuity of its analytical arrangement. It has but little original matter, the *ita lex scripta est* seems almost exclusively to have guided his pen; and we are often left to regret that points of difficulty, and many which still remain *vexatæ questiones*, are frequently either not at all noticed by him, or so slightly as to furnish no new light. . . . This digest was first

[1] Ante, § 171 et seq., 189, 222.

published in 1804; afterwards in 1807, with some additional chapters, and other considerable improvements. The fourth and last English edition is by Henry Hopley White, Esq., in 1834. The work has been carefully revised, and much improved, by the addition of numerous cases, and the late important modifications of the real law. There have been four American editions; the best are by Edward D. Ingraham, in 1823, with references to American decisions; and the fourth edition, in 1834, from the third London edition by Thomas Huntingdon."[1] Since Hoffman wrote, however, a better edition, for American use, has been given to the public, edited by the late Professor Greenleaf.

§ 293. This work has been very much used heretofore, by students, as a text-book. It may still be occasionally opened by them with profit. But, at the present day, there are other works, to supply its place, better adapted for elementary reading.

§ 294. *Blackstone's Commentaries.*—The celebrated Commentaries of Blackstone consist of a series of Lectures delivered by the author of them in the University of Oxford, and first published in the year 1765, and the four succeeding years. The auditors appear to have been, in considerable part, not law students preparing to practise, but young gentlemen seeking a liberal education. The Lectures were, therefore, very elemental in their style and construction, at the same time that they were exact in their statements of legal doctrine. And they seem to have wrought almost a revolution in legal education.

[1] 1 Hoffman Leg. Study, 2d ed. 232.

§ 295. There has always been some difference of opinion respecting the true rank of this celebrated work, in the commonwealth of law books. Purity and elegance of style have by all been accorded to it, together with beauty of arrangement. Its depth, as an expositor of the profound in the law, has been questioned by some. The truth on this point appears to be, that the author did not make in it any special advance in the line of legal discovery; but, taking the material which others had provided for him in scattered parcels, and in uninviting forms, he wove it into a web of great beauty, and great accuracy of texture.

§ 296. Nor, though the work is not to any great degree original in the sense of embracing new discoveries of legal truth, is it destitute of the originality of form, of combinations, and of marshallings of things known. And, though still it is not profound in discovery, it is yet profound as clearly bringing to view the deep things of the law, as well as those things which lie more upon the surface. In every respect, it is worthy the study of the greatest and most accomplished minds. It is a work in which the author exceeded his ordinary capacity; therefore we may infer that "Almighty God"[1] was with him in its production.

§ 297. It has been universally conceded, ever since this work was made public, that, in some form and at some time, it should be read by every law student. But, like Coke upon Littleton, which, originally

[1] See ante, § 161, 197–200, 264, 267.

meant for a first book, has been found more obscure and less suited to the purpose as the years receded from the date for which it was adapted by its author, these Commentaries of Blackstone become more and more difficult, and less and less profitable, with each year which conducts us away from their starting point.

§ 298. Mr. Hoffman, after mentioning a considerable number of books which he recommends to be read before these Commentaries are undertaken, says: "We are particularly sedulous to guard against the too common error of calling students to the Commentaries of Sir William Blackstone, before they have laid a solid foundation in requisite preliminary studies. It is a serious mistake to suppose that, because that work is an elementary outline of English jurisprudence, it should be placed at once in their hands. We scarce ever saw a student well grounded in the Commentaries, who had pursued this course; and we believe the mistake of which we now apprise them has often either occasioned despondency, or induced students to rely on repeated readings, with the vain hope of mastering the difficulties. We are assured, on the contrary, that, if they carefully study *what* has been pointed out as preliminary, they will *study* this admirable work with understanding and alacrity, and eventually save time; as they will, after one perusal, scarce have occasion to regard the work in any other light than for occasional revision and reference."[1]

[1] 1 Hoffman Leg. Study, 2d ed. 152, note.

§ 299. Now, it cannot be doubted, that, at the time when these Commentaries were originally produced, they were intelligible to young gentlemen of ordinary general collegiate education, who had no special knowledge of the law. They were certainly intended by their learned author to be so; nor have we any account of complaints made, that he failed in this part of his design. And, if he were to-day to rise from the grave in which his mortal part has lain for near a hundred years; and, coming to this country, "write down," to use a technical expression, the Commentaries to the present date and times and the circumstances of our republic; it can hardly be doubted that any young man among us, competent to enter upon law studies, could then take this enlarged and improved work, and read it understandingly and with profit. It would not harm him to read other law books first, but certainly he could read this profitably as a first book.

§ 300. Such, then, is what needs to be done. Since Blackstone cannot be called back to us, some living man should do for his Commentaries the work which he would perform if he were among us. This has been, for many years, a favorite project with the author of the present volume. And the material employed by him in the preparation of this volume, is taken from a collection originally made for the first volume of the enlarged Blackstone. But on reflection it was thought best to let this part of the author's discussion appear in advance of the rest, in a more expanded form than it could assume if incorporated into the introductory portion of Blackstone's work.

§ 301. It is never justifiable to put into the work of a celebrated author new matter, and publish the new with the old, without any mark of distinction. Whenever this is done, a wrong is inflicted upon the honored dead; and the living are less benefited than if the authority of the old were preserved, by the preservation of the distinction between it and the new. But when the partition is made clear by a line which cannot for an instant be mistaken, he who brings to the ancient work those accessions which vitalize it and give it a living power, adapted to the present moment of time, more honors the dead than do the builders of costly monuments, and the utterers of impassioned eulogiums.

§ 302. The date of Blackstone's Commentaries may be stated, in general terms, to be about that of our Revolution, whereby we were separated from the mother country. The reader of the Commentaries needs to be apprised, as he goes on, whether the several statements of the law, there found, exhibited truly the American colonial law as well as the English, and how far the doctrine has been modified among us by subsequent advances in legal science. And there are various subjects of legal discussion, important now with us, which were not deemed so by Blackstone at the time he wrote for English readers; and these need to be treated briefly, and in a simple way, after the manner of the original work.

§ 303. There is nothing so discouraging to the student, nothing which so hinders his actual progress, as to be compelled to read volume after volume of books however honored, or however good in

themselves, without being able to ascertain, as he goes on, whether this or that is, or is not, the law in his own State, — the law which will be his guide in giving counsel to his clients. A modern American treatise, written for use in all the States, does not indeed enter into questions of mere local law in any particular State; still the reader of such a treatise has always at hand the means to ascertain what of it is applicable to his own wants. He has before him, or ought to have, the statutes and law reports of his State, and he should constantly consult these in connection with the reading of his text-book. But the reader of Blackstone, as the great author left his work, or as it is given us in the modern editions where various notes are attached to the bottoms of the pages, needs still other help; being the same which has been already mentioned, whereby this old English production will be rendered both American and modern.

§ 304. *Kent's Commentaries.* — The Commentaries of Kent, like those of Blackstone, were originally lectures. But they were delivered to classes of law students, who had already made some progress in their studies; therefore they were never, like Blackstone's, meant absolutely to constitute a first book. It is not necessary, in this place, to say any thing in commendation of this great work of American genius. It is less methodical in arrangement than Blackstone's book; but, for practical reading, this fact does not constitute any very serious objection to it. Its great utility consists in its extraordinarily succinct, clear, and accurate statements of legal doctrine; compact,

indeed, quite beyond all ordinary precedent and example. Therefore, in this great storehouse of the law, the student should revel, and leave nothing there untasted and undigested.

§ 305. It mars the appearance of later editions of this work, that they should have been put out under the supervision of editors who deemed it to be their duty to add digests of recent cases to the foot-notes. The work, as the author left it, is not a digest, but a treatise, and it is worse than putting new wine into old bottles to add a digest to such a treatise. If there have been later developments of legal principles, modifying, or qualifying, or overturning the doctrine of the text in any place, these should be mentioned by an editor. He who brings down the work of a deceased author for present use, should do it in the spirit of the author, and according to the original plan, not in a way entirely different, even though it should be in itself better. It may possibly do to tack a modern digest, by way of notes, upon an old treatise, when the treatise is a full one; but, when it professes to be only an outline of legal doctrine, as in the present instance, the utility of it, seeing the book is for students, is not apparent.

§ 306. The works of Blackstone and Kent should both be read by students, though neither of them exhausts any one of the subjects discussed in it. And this is reading enough of the particular kind. To read many books, no one of which treats any thing fully, but all appears in outline, and each traverses the same general field as the rest, is not wise. The student should accustom himself to thorough discus-

sions, to the mastering of subjects by explorations made into their very depths and to their very bottoms. Thus he acquires both the legal powers and the habits essential in a successful practice. It is true, he cannot go over all the law, in this way, during the time devoted to preparation for law practice. But he can go over a part of it thus, and the rest after he is admitted to practice, while he is waiting for business.

§ 307. *Story's Works.* — The works of the late Mr. Justice Story occupy a considerable space in legal literature. They have been praised above measure, and abused above measure, and they seem never to lie easy in their proper places. In truth, it is not quite easy to state, in a word, what their just position is. Their author was a man of great legal capacity, and of eminent learning in the law. But, if Lord Coke were alive, he would say that "Almighty God" was not with him in the preparation of his law books, to "open and enlighten the understanding of the desirous of justice and right;"[1] for he was in the habit, when convenience suited, of drawing from the works of preceding writers, certainly without marks of quotation, if indeed with any proper credit, to a degree not easy to justify. Yet, with all this, so contradictory is human nature sometimes found to be, he was a man of great purity and uprightness of mind.

§ 308. It might be complained of this author that he wrote his books too rapidly; but such a complaint would not be just in form, because often the most rapid writing is the best. To be so, however, it must

[1] Ante, § 161, 267, 296.

come from a full fountain, duly prepared. This author's fountain was not always full, not always prepared; and, on such occasions, words supplied the place of ideas, and the result was more verbosity than true learning. He was a man overwhelmed with work, and he did more than his particular order of capacity enabled him to do, and always perform it well; for, besides writing law books, he held the office of judge of the Supreme Court of the United States, and as such judge presided at the circuit courts in districts crowded with business, and served likewise as professor in a law school, besides assuming various other incidental duties which he could not well cast off.

§ 309. Yet, with all these drawbacks, there is great merit in his works. We see in them the marks of a great legal intellect; in their worst places, a sort of "archangel ruined;" and, in their best, a very clear light of the better sort, such as shines from but few writings, on the law, or on any other science. His books, though partaking in some places of the digest, are not mere digests; and, on the whole, though the praise of them cannot be so unqualified as one might wish, they are really an ornament to our American jurisprudence, and a power therein. It does not follow, because they are defective, that any other man, who may undertake, can write better books on the same subjects. If the golden grain in them is too much buried in chaff, this does not prove that the grain is not golden, and is not precious. These works were not written particularly for students, yet they are often read by them.

§ 310. *Greenleaf on Evidence.* — The author of this work, who was a co-professor with Judge Story in the Harvard Law School, tells us, in the Preface to the first volume, that it was written to be used as a text-book by the students under his instruction. It does not enter into the depths of this part of legal science; but, floating over the surface, it pictures to the mind of the reader the known and the familiar in a very pleasing and profitable way. And it has found considerable favor with the older members of the profession, and with the courts. Sometimes it unhappily fails to cite the authorities opposed to the view taken by the author on a particular subject; but, as nearly all teachers of the young acquire the habit of exacting from their pupils obedience to their views, without helping them to form opposite conclusions, this defect, for such it truly is, should not be criticised too severely.

§ 311. This work is, what it professes to be, a *treatise.* As such, it is adapted to be read, while it is suited also for use in practice. And, though many inexperienced practitioners suppose, when they look at this work, and at a bulky digest on the law of evidence, laid beside it, that the digest is more useful as a handbook than the treatise, a little experience satisfies them of their error, and they lay down the digest, and turn to the treatise.

§ 312. It is not deemed advisable to mention, in particular, any other works by deceased authors, in the present connection. Yet there are various others which the student will have occasion to open, and even to read. Let it be remembered, however, that

new books are constantly being written, and that it becomes both students and practitioners to look at these as well as the old, and give their studies to such as are most worthy. He who assumes, without proof, that any old book is better than some particular new one on the same subject, departs from the true line, equally wide with him who accepts of the new as being, of course, better than the old, simply because it is new.

III. *Concerning a prescribed Course of Study.*[1]

§ 313. Various attempts have been made, both by writers of ability and by incompetent ones, to help law students by laying down a course of particular books to be read. The last of these attempts, within the author's knowledge, appears in the form of a pamphlet, published at New York, written by a lawyer there, and indorsed as sound by a professor of law in a law school. The writer seems to deem himself a pioneer in this work, therefore it may be set down as original with him. He recommends various books, and specifies the order in which they should be read; among others, is "Loring on Husband and Wife," a work which was projected by Judge Loring, while a law lecturer, but was never written and published. Of course, an outline of studies drawn by legal gentlemen who never read what they recommend, because it was never written, and whose favorite author has produced nothing for public use, must be worthless, unless what is reliable comes by chance.

[1] And see post, § 374–380.

§ 314. But suppose a work of this sort to be executed by a lawyer eminently wise, who should set down nothing except on the most careful consideration, it would still become questionable whether it would not do more harm than good. The object of law studies is to *educate* the student; the mental qualities of no two students are exactly alike; therefore, if two are to practise in the same field of the law, still the processes of education in the two instances must be conducted in some respects by different means, in order to be conducted the most successfully. Again, each student should be specially educated for the particular locality in which he is to practise, and the particular department of professional business which he is to enter.

§ 315. Moreover, the law student is a young man who has received some preliminary education, whose mind is in a good degree mature, and who is in a little while to be deemed competent to advise clients in their most important concerns. He must, very soon, look at questions for himself, and have opinions of his own. Shall he not begin now? He already *knows himself:* if he does not, he is premature in entering upon the study of a profession. He is taught, in this work, and in other works which he will read, what sort of thing the law is, and what sort of acquired qualifications he must possess, in order to be fitted for its practice. In works on legal bibliography, and in law catalogues, and especially in the law libraries which he frequents and from whose shelves he daily takes into his hands books for examination, he learns what books there are, and what are their qualities, and how far they

are respectively adapted to his own wants. If the young man is ever to be out of the baby-jumper, is it not time to begin to consider himself so now?

§ 316. But, should a young man still need advice, he has, if he is at a law school, the course laid down for study there, and the assistance of the professors. They know his particular case, as an author cannot. Then, if he is reading in a law office, he has the assistance of his preceptor there. Then, once more, if the best book on each subject should be recommended in these pages to-day, better books on some of the subjects might appear to-morrow.

§ 317. It is a great mistake to attempt to help students too much, and in the wrong places. Young men are not machines; they have powers of their own; and, for a young man who is reading law, there is nothing more serviceable than to examine books for himself, and choose out of them such as are adapted to his own needs. Even if he commits an error in this, the harm to him will be of the most profitable kind.

CHAPTER XIX.

THE FIELD OF LEGAL ACQUISITION.

§ 318. THE minute divisions of the law will be seen by the reader as he progresses in his legal studies. It is proposed here to give a general map of the field, and to point out some things, respecting particular spots therein, important for the student to bear in mind.

§ 319. The principle, the reason, or the authority, which constitutes the law of the land, as explained in a previous portion of this volume,[1] may be regarded, in some sense, as the warp extending through the woven web of the law; while the respective *subjects*, as they are called, such as Real Property, Bills and Notes, Evidence, and the like, are woven by running into this warp the woof of such fact and circumstance as bring into action the various principles, reasons, or authorities.

§ 320. Our text-books principally treat of the law in the order of subjects. This, for most purposes, is the convenient way; though the reader has already seen[2] how valuable would be a collection of volumes enumerating the leading principles, and showing how they run through the different subjects. And the student should look into the books of law maxims,

[1] Ante, § 60–136. [2] Ante, § 228–230.

and such other books as most nearly approximate this idea in their plan and execution, for such help as he finds them capable of imparting to him.

§ 321. Turning now from the consideration of the law in the order of its principles, let us look at it, a little, in the order of its subjects. And the first thing to be noticed is, that the subjects run into and include one another.

§ 322. Thus, one subject of legal disquisition, on which books have been written, is the Law of Easements. Another is the Law of Mortgages. Still another is the Law of Executory Devises. And yet another is the Law of Estates. To these might be added several more; all of which are comprehended in the general title of Real Property Law.

§ 323. Yet the Law of Mortgages, for instance, runs also into the Law of Contracts. And a contract may appertain to real property, as well as to personal. This Law of Contracts is of vast dimensions; extending, as just said, into the real property department, as well as still more into the whole field of personal property.

§ 324. It is useless to go over, in this way, all the ground covered by our law. These hints will enable the young reader to see for himself how it is, in each department, as he progresses with his studies. And he will observe, that a particular subject may often be called by any one of several names with equal propriety. Thus, referring to some particular matter, we may say it pertains to the law of bills of exchange, or to mercantile law, or to the law of contracts; just as we choose to speak, or as the one word, or the

other, or the other, best suits the connection in which it is employed. The law of contracts is the largest of the three subjects just mentioned, including the other two; mercantile law is the next, including a part of the law of contracts, and all the law of bills; and the law of bills is the smallest.

§ 325. There are not words in our language, whereby we can designate, precisely as on a map, various divisions of our law, and have no one include any thing which belongs equally to another, and the collective names embrace the whole; as, when we mention Europe, Asia, Africa, and America, we speak of the entire habitable globe, separated into parts by distinct lines. The law of evidence is a great division of our law, but it pertains to the law of contracts, the law of real property, the law of personal property, the law of private torts and of public wrongs, the international public and the international private law, and to all the rest; while, in another sense, it constitutes a distinct department by itself. The same may be said of what is called the law of pleading, the law of practice, and some other things pertaining to the course of a cause in a court of justice. And the law which in England and some of our States is administered in courts of equity, in distinction from the courts of the common law, is of a somewhat similar sort.

§ 326. There have been many discussions, by lawyers, aimed at ascertaining what is the true scientific division of the legal field. They are like the endeavors to find the philosopher's stone, to square the circle, and to obtain a perpetual motion, — endeavors

after what, in the nature of things, cannot be performed, because the thing itself does not exist. Our law has grown up with our language; and, if in the nature of the law there was an ascertainable and exact scientific division and order, there would be words in the language fitted to convey the idea.

§ 327. Still, as matter of practical convenience, we may divide off the legal field in various ways, as may best suit the particular purpose of the division, or our tastes. And the words which our language gives us are exactly adapted to such divisions.

§ 328. While we proceed, therefore, to look cursorily at the boundaries of the legal field, we shall observe likewise some of its divisions; that is, divisions in the sense already explained, where each one more or less overlies, or is overlain by, another or the rest.

§ 329. As demanding the attention of the law student, we have, in the first place, *the law of nations*. This part of the law which governs civilized people has grown up out of the usage of nations, out of treaties, and out of the opinions of men who, possessing unusual powers, have been able to discern things clearly, and to express them in a way to command the assent of their fellows. The law of nature has sometimes been supposed to have more to do with this part of the law, than it has with such laws as govern communities within themselves. But this is doubtless a mistake; for, truly seen, the law of nature rules everywhere, while everywhere it is more or less limited and controlled by rules of a technical kind.

§ 330. For the most part, the law of nations is administered, not in the courts of justice, but in the

diplomatic field, and in the field of arms. Still, in every respect, it is recognized by our judicial tribunals, and it is permitted to have sway in them, whenever a judicial question comes within its cognizance. And there is a portion of this law, called usually the private law of nations, or the conflict of laws, which has its most frequent illustrations in judicial affairs in the courts.

§ 331. Every lawyer, then, should be acquainted with the law of nations in all its branches. It does not come so often within the scope of actual practice as some other sorts of law; but it is of transcendent importance, and no legal practitioner is thoroughly furnished for his work until he has mastered its leading principles, and added some knowledge of its details. Questions connected with this department of legal knowledge are usually among the most important, and the young lawyer wishes above all things to appear well in the great causes.

§ 332. Coming, next, to our own country, we find here a peculiar system of governmental machinery, unknown in the Old World. It must be understood by the lawyer, if he would serve either himself or his clients well. Yet, in fact, it is less understood among us than any other department of the law which engages professional attention. Let the student, therefore, read the *Constitution* of the United States, and *think*, while he reads; and, in the same way, read the constitution of his own State. Let him consult, also, such works as are written in exposition of the one and the other; but, in this, let him never lose sight of the text, and never cease to think.

He will find, before his professional career closes, abundant profit in this. Here is a new field, — for what has thus far been done in it cannot be said even to approach its cultivation, — and into it the thoughtful and the wise young men of our profession will enter.

§ 333. The laws of the United States, and the line dividing National and State jurisdictions, are things to be studied most carefully and pondered most accurately. They concern the every-day practice of every practising lawyer, as well as the State and National legislatures and executives. And the student should remember, at the outset, that his inquiries into these subjects are to be directed to ascertaining what the law is, in distinction from what it ought to be. The newspapers, the party harangues of the politicians, and the bar-room talk throughout the country, are filled with insufferable nonsense respecting all sorts of constitutional subjects. The first thing for the student to do, is to forget all this, and to close his ears against it for ever and ever hereafter. This may be hard for him, if he wishes to play the demagogue in politics; but, if he means to be a true lawyer, he must do hard things.

§ 334. In looking into questions of constitutional law, it is necessary to bear in our minds certain distinctions, such as are requisite also to be carried with us when examining other departments of legal science. For example, there is a difference between the question of the jurisdiction of a court over a particular matter, and the question of the particular law which ought to guide the court having the jurisdiction: as,

if it is agitated whether the pen I now write with belongs to me or to another, you, who read, may not have any jurisdiction to decide this case, yet the Honorable Mr. So-and-So may be the judge of the court within which the jurisdiction will fall. At the same time the court may pronounce in the case a judgment contrary to law, but your judgment would conform to the law; and, though the pen is mine, another has made a successful claim to it, and there is no help for the result. So, in like manner, the jurisdiction over the question whether a State in our Union can lawfully secede, is not in the courts; because courts sit to hear law-suits, and such a question cannot be settled by a law-suit. It is, however, within the jurisdiction of Congress and the President; because it is to be decided by an appeal to arms, and Congress and the President control the war power. Therefore, when a question of this sort comes incidentally before a court, — for it is only incidentally that it can come, — the tribunal does not undertake to decide it, but awaits the decision, or follows the decision already pronounced, by the departments of the government having the jurisdiction.

§ 335. A question of this sort was once put, and put well, by the late Mr. Calhoun, in one of his constitutional discussions. It was assumed to be a sound doctrine of constitutional law, as no doubt it was, that, in a time of peace, when the States were severally performing their proper functions in our governmental system, there was no power in Congress to abolish the system of slavery in a slaveholding State. If Congress had passed an act directly declaring the

slaves free, the courts would unquestionably have held it to be unconstitutional. Yet with Congress there was a *jurisdiction* to effect, by another process, the same result; and, though the exercise of the jurisdiction in this way would have been an act in violation of the Constitution, there was no jurisdiction in any other department of the general government, and especially none in the courts, to correct the error; and so the result would have been a wrong judgment rendered by a competent authority, in a case from which there was no appeal, leaving no remedy unless one was obtained by nullification or secession on the part of the State.

§ 336. The method by which this conclusion was made to appear is the following: The Constitution[1] provides, that "the United States shall guarantee to every State in this Union a republican form of government." Now, it falls necessarily within the jurisdiction of Congress to determine whether the government of a State is republican or not;[2] and, though the government of a State permitting slavery is in fact republican within the meaning of this provision, yet Congress, in exercising its rightful jurisdiction under the provision, may wrongfully declare it not to be republican, eject the senators and representatives from such State, and organize a new State government, in which slavery should be abolished; and there is no way in which the error can be corrected.[3]

§ 337. Here we see also, that, in constitutional law, the same as any other, the right *process* must be

[1] Const. U.S. art. 4, § 4. [2] Luther *v.* Borden, 7 How. U.S. 1.
[3] 1 Calhoun's Works, 332 et seq.

taken to effect a given object; for what could not be done by a direct act of Congress, could be accomplished indirectly in another way. It is so in the courts. If A owns a horse, and B gets possession of it, and refuses to deliver it up to A, this owner cannot recover the identical horse by suing B in what is called an action of assumpsit, or in an action of trespass, but he must bring replevin. In other words, he must adapt his process to the case. So, it may be, under some circumstances, lawful for Congress to extend the elective franchise in a particular State; and, under all circumstances, it is within the congressional jurisdiction, the same as it was to abolish slavery in the States in the case put by Mr. Calhoun. But it does not follow that a mere act of Congress, simply laying down the qualifications for voters in the States, or making any provision on the subject, however just and lawful in itself, would be constitutional. This is a work which must be done, if at all, in the constitutional way which has just been pointed out.

§ 338. These illustrations will help the student in the study alike of constitutional law and of every other kind of law. Let him always strive to ascertain what are the leading doctrines, let him carry them in his mind; and, when the facts of real or supposed cases change, let him inquire whether the doctrine which did not apply formerly, does not apply now. Thus, though it would not have been a sound interpretation of constitutional law, for Congress to declare the government of South Carolina not to be republican in form, while that State had passed no act of secession, and her members of Congress and her senators were

in their seats, and all things remained as they were when the Constitution was adopted; yet, when she ceased of her own volition to be represented in the councils of the general government, and ceased to have any State "government" within the terms of this guaranty clause in the National Constitution, it became both the right and the duty of Congress, acting under command of this clause, to establish "a republican form of government" in the State; and, in doing so, to determine what should be the status of her people, and who should be the voters. For, when the State came to have no "government" whatever, within the terms of the constitutional guaranty, she ceased thereby to have "a republican form of government," since something cannot exist as a part of nothing, and no question remained or could arise as to whether this or that "form" was "republican" or not; and, out of this condition of things, the duty at once sprang up and bound Congress to execute the guaranty, by giving the State that, which confessedly she no longer had. The doing of this involved, of necessity, and as a part of itself, the ascertainment by law of the persons who, in the State, should be the actors in establishing the new State government. No local law of the State could constrain Congress, or in any way furnish it with a rule for its guidance, in its work of carrying out a behest of the Constitution of the United States; which, by its own terms,[1] is, with the acts of Congress made in pursuance of its provisions, "the supreme law of the land, . . . any thing

[1] Const. U.S. art. 6.

in the constitution or laws of any State to the contrary notwithstanding."[1]

§ 339. Coming now to a consideration of the great mass of our laws, being the unwritten and statutory laws of the several States, we may not unprofitably look at them a moment under the following heads: —

First, *the law of real property*. There is a vast difference between real and personal estate, as respects the rules of law by which they are severally governed. Real estate constituted, in former times in England, the great bulk of the property about which litigation was liable to arise; and, in those times, there were peculiar reasons, growing out of the feudal system, by force of which many rules were established different from what would now guide the courts if the questions were new. Besides, there are in the respective natures of real and personal property other reasons which should cause various distinctions between the law of the one and the other, even if they should not call for quite diverse systems of law.

§ 340. It becomes necessary, therefore, that a great deal of study should be given to real-property law. In practice, as legal things now are in our own country, the occasion to advise on questions of real estate is not quite so frequent as on some other classes of questions; but, when they do occur, they are very important in their nature, and a man might as well undertake to walk the streets without cane or crutch, with one leg, as to practise law with no familiar

[1] Ante, § 112, 113; Bishop Secession and Slavery, *passim*; 1 Bishop Crim. Law, 3d ed. § 136 and note, 2 Ib. § 1224, note.

acquaintance with the peculiar laws which govern real property.

§ 341. In former days, more attention was paid to this department of legal science than now. The degeneracy of the profession, in this respect, is much to be regretted, for the sake both of the lawyers themselves and of the public.

§ 342. There is indeed, in the law of real property, much old learning which has now become practically obsolete. Hence the importance, already mentioned, of having the old text-books re-edited, in such a way as to show, at a glance, what is obsolete, and what is not. But the old should not be utterly cast out from our law libraries; for often it is of the utmost importance as furnishing illustrations of the new, and providing rules to guide the decision in altered circumstances and more modern times. The student, in reading, should not utterly neglect the old and the obsolete; on the other hand, he should obtain such a general knowledge of it, as will enable him to refer to it, and draw on it for illustrations and analogies, in the course of his practice. But it would be a misuse of his time to study this cast-off learning with the same diligence and accuracy as the living law.

§ 343. This department of the law, like some others, has its feather-edge, where it tapers off into the law of personal property. And the exact line should be traced by the student, so that he can always know whether the particular question on which he is advising pertains to real or to personal estate. An example of this occurs in what is called the law of fixtures. If one takes a lease of another's real estate,

he can carry off with him, on the termination of the lease, any personal property, of his own, which he may have upon the premises. But if he has added to the real property some of his own personal property, in such a way as to make it a part of the real estate, he cannot carry it off, after the lease has expired, even though it was his own. But fixtures — how with them? Here is, in part, the feather-edge, and the student should examine it carefully; and, indeed, the whole feather-edge of this and of every other subject of the law, where such an edge exists, should be made the topic of special study.

§ 344. Secondly, *The law of personal property.* — It will perhaps surprise the reader to know, that our law books do not, to any great extent, treat of personal property under a separate head, the same as they do of real estate. A treatise, which shall do this well, is really a desideratum in legal literature. Still, in books on contracts, and in various other classes of our professional works, the law of personal property is to a good degree unfolded. For example, a bill of exchange is a species of personal property, and we have books on the subject of bills of exchange.

§ 345. Thirdly, *The law of contracts.* — This branch of our law has assumed, of late years, when commerce has been enlarged, and every species of industry has been multiplied, vast proportions. Almost every business transaction is, in some sort, a contract. It becomes, therefore, important for the student to give special attention to this subject. He must learn the leading doctrines well, and learn where to find, in the books, the more minute and remote points.

§ 346. The distinction between instruments under seal and not under seal; the various distinctions growing out of the doctrine of the consideration; the rules pertaining to the modification of the two kinds of agreement, sealed and not sealed, by subsequent agreement or otherwise; — these, and many other things which the books on those subjects will point out to the student, should be learned with great accuracy, and treasured up carefully in the memory.

§ 347. The law of partnership, as a branch of the law of contracts; the law of insurance, as another branch; the law of bills of exchange and promissory notes, as still another branch; indeed, all the branches should be examined in connection with the main trunk.

§ 348. Fourthly, *The law of torts, or private wrongs.* — If a man slanders his neighbor, this is a tort; if he trespasses on his neighbor's grounds, it is a tort; if he drives his carriage into his neighbor's, upon a highway, inflicting an injury, it is a tort; and so we might enumerate many other sorts of tort. It is needless to say that this great department of our law, to which many books, under various titles, are devoted, should receive due attention from the student.

§ 349. Fifthly, *The law of the domestic and personal relations.* — Marriage constitutes one of the domestic relations, being the relation of husband and wife; and, out of this relationship, grows that of parent and child. Then we have the relationships of master and servant, of guardian and ward, and the like. It is plain that many legal questions must arise

out of these various relationships, especially that of husband and wife. The law of marriage itself is a considerable branch in our law; that of divorce, a considerable other branch; these two being usually treated of in the books together. Then the property rights which depend upon marriage constitute a subject of wide extent and great importance.

§ 350. The considerations urging to the study of the law of real estate apply here. Each of these relations depends on special reasons, and consequently the law regulating it is interlaced with various rules peculiar to itself. In marriage, and what depends upon it, this is particularly so. A practitioner, who is familiar with every other department of our law, yet is unread in this, cannot give sound advice on questions coming within this department.

§ 351. Sixthly, *The law of wills, and probate law.* — The importance of being familiar with this department of legal learning must be obvious to the reader on the very mention of the subject. People are continually dying and making their temporal preparations for death, and out of these things grows up much business for the practising lawyer. And this department, like some of the others, has its peculiar rules, or legal principles, which must be separately learned.

§ 352. Seventhly, *The equity law.* — When the student comes to the perusal of this division of our law, he will read various discussions concerning its origin, not necessary to be entered into here. Suffice it to say, that, in England, there are, and from time immemorial have been, a distinct class of courts adminis-

tering what is technically termed equity. This equity is as truly law as is the law administered in what are called the courts of common law, which are the ordinary courts of the country for the doing of all manner of business. But the proceedings in the equity tribunals are conducted in forms differing greatly from the common-law forms; and, in a small class of cases, the equity courts interfere with the execution of the judgments rendered in the courts of common law. The great peculiarity of the equity jurisdiction, however, is, that it gives relief to complaining parties in various cases where, by reason of a defect in the form of the proceedings in the common law courts, or for some other reason, these courts would not or could not administer the same justice which is granted by the equity tribunal.

§ 353. All this is matter which is perfectly plain to a well-read practitioner; but, at the same time, it is embarrassing to the inexperienced student, and upon the public it sometimes creates very erroneous impressions. Thus, for illustration, by the common law as it came to us of this country from England, if a man marries a woman who has in possession never so large an amount of personal property, this property becomes his by virtue of the marriage, and she has no more control over it than if she had never possessed it. On the other hand, he is under legal obligation to pay her debts. And the parties cannot vary the course of the law by any agreement made before marriage, or after, between each other. Thus it is by the common law as administered in the common-law courts. And philanthropists and others, who have

been anxious to extend among us the legal capacity of married women, have made great use of this legal doctrine, as showing how wrong the law is.

§ 354. But, let it be observed, this statement exhibits the legal question only as it stands in the courts administering what is technically termed the common law. The equity tribunals administer law also, and the law which they administer is just as much a part of the law of the land as the other. If, then, a woman was about to be married, and she did not wish to give the man all her personal property, and the use during the coverture (and, if a child should be born of the marriage, during his life also, after her death) of all her real estate, in payment for his making her his wife, she might, before the marriage, convey to trustees all or any part she chose, to be held for her sole and separate use, under such reasonable regulations as she should please to put into the instrument of conveyance; and the courts of equity would compel a strict performance of the terms of the trust, and preserve to her the property, both as against the husband, and as against his creditors. And, considering that the law must have some rule, to be applied in the absence of an antenuptial agreement, it does not seem on the whole to have been so absolutely unreasonable as to call for condemnation in very extravagant terms. Still, in most of our States, legislation has of late changed the rules of the common law in these and other particulars; extending, more or less, the legal rights and powers of married women as to property.

§ 355. But it is a little odd, that, in most of our

law books, treating of the common law, the writers will proceed to lay down doctrine after doctrine, whereby certain results are shown, precisely as in the popular instance just mentioned, without any allusion to the fact, that, if the parties go into a court of equity, the result will be quite otherwise. This method of treating legal subjects is well enough when we get used to it; we can even accustom ourselves to be constantly in pain without wincing; but, to the student, who is not used to it, it is, let us repeat, embarrassing. And the only help for him is to become used to it, as early in his studies as practicable.

§ 356. To take up the books treating of the equity law, as first books, immediately on commencing law studies, is premature; because they are not written to be so used, and because the subjects of them are too intricate for young persons wholly unfamiliar with legal discussions. Yet it is earnestly recommended, that, as soon as the student finds himself capable of comprehending those books, he should look them over, at least cursorily, and obtain a knowledge of the subjects therein embraced, and of the leading doctrines pertaining to this branch of the judicial system. This will prevent the necessity of unlearning what has been learned; for, if the student has been taught in the books of the common law that a thing is so and so, and afterward he reads in the books of equity that it is otherwise there, and that equity overrules the law, this is certainly compelling him to unlearn what he before acquired, and the process is neither pleasing nor profitable.

§ 357. Where, indeed, the English system prevails

with us, this method of learning helps us to keep constantly in our minds the distinction between the equity and the common-law jurisdictions. But it does not pay, even for this purpose. In our own country, the distinction is kept up in the United States' tribunals, the same as it exists in England. Therefore the practitioners in every State, being liable to be called to appear in the United States' Courts, must understand it. In some of the States, the distinction is preserved also; while, in others, law and equity are blended, and both are administered in the same courts, and in the same forms. In a part of the States, where the distinction still exists, the two systems are administered by the same tribunals, yet the practice in the two classes of causes differs.

§ 358. Some law students and lawyers are inclined to neglect the department of equity. But no lawyer is fit for practice, even in mere cases at the common law, unless he has a general understanding of the equity system; while, in reason, one would think any lawyer, aiming at a general professional business, would seek as well equity causes as causes at the common law. Besides, when clients come for advice, they do not first ascertain whether the question pertains to equity or to law; they simply seek a lawyer; and he who presents himself before the public as a lawyer, while possessing no knowledge of the equity department, obtains clients' money by false pretences. The student, therefore, is specially urged to acquaint himself with the system of laws administered in courts of equity.

§ 359. Eighthly, *The criminal law.* — No special

observations, respecting this department, are deemed necessary. Every student will see, for himself, the importance of becoming acquainted with it.

§ 360. Ninthly, *The law of evidence.* — There are several obvious distinctions, of a practical sort, which are still very often overlooked. One distinction is between the law as it really is, and the law as it will be actually laid down by the court before which the question will come. It is plain which is the practical side of this distinction. Another distinction is between the real fact of a case, and what will be proved as fact on the trial before a court and jury. Here the practical is, as before, with the latter alternative.

§ 361. The law of evidence, therefore, enters into every thing of a kind to engage the attention of the legal practitioner. It is a system of law somewhat intricate in itself, and not in all respects well laid down in the books. It must be learned. No practitioner can move a step in safety without a knowledge of its principles. If one does not intend to go *him*self before a court, still, if he gives advice in *cham*bers, he must understand the law of evidence.

§ 362. Tenthly, *The law of pleading and practice.* — This department of the law concerns the framework of the various written allegations, which the one party and the other present in court in explanation of their respective claims; and the course of the court in the various circumstances in which parties sue or defend therein. There are obvious reasons why this department of the law needs to be understood; and, besides these, there are other reasons not so obvious. Among the latter it may be mentioned, that

a consideration of the procedure in court is often essential to the determination of the question whether the party has rights. One cannot always advise with safety in a cause, unless he is familiar with the rules of pleading and practice.

§ 363. Eleventhly, *The law of conveyancing.* — The importance of this branch of the law is obvious on a mere mention of it. Upon it depend vast interests on the part of clients, and it is a source of profit to the practitioner.

§ 364. *Closing Considerations.* — Thus we have passed under review various heads of the law, and not one of them has been found to be unimportant. It is preposterous, therefore, for a young man to undertake legal practice until he has devoted a great deal of profound study to the profession. And, after he enters the profession, it is madness for him to cast aside his books, and consider that he has no more to learn.

§ 365. The studies of the lawyer are never ended. Not only must he study his cases, but he must read books, the same after he enters upon practice as during his preparatory training. No wonder, seeing how much laziness there is in human flesh, there are so many men in the legal profession who are unworthy of their calling!

CHAPTER XX.

WHAT IS TO BE LEARNED BESIDES BOOKS.

§ 366. If an instruction book in English grammar were put into the hands of a boy, and he were told to learn every rule, so that he could repeat it accurately word for word, we should know what the result would be, though he obeyed the injunction to the letter. He would come out where he began, deficient of the ability to "speak and write the English language with propriety." So, if a girl should learn to repeat every word contained in the largest instruction book for the piano ever written, she would not therefore be able to make the most entertaining music ever heard.

§ 367. These illustrations apply, with almost equal force, to law studies. Much more is necessary, to constitute the able lawyer, than the mere ability to repeat, however accurately or readily, the various principles of the law; even though there be added to this a knowledge of all the previous illustrations, or law cases, which have occurred. No legal learning is of any practical use, unless accompanied by the ability to adapt it to new circumstances, and to cases such as were never known in exact form before. Besides, a mass of mere inert knowledge, of any sort, is useless lumber, crowding the brain and obstructing its proper action. Education, whether for legal prac-

tice or for any thing else, consists of something quite different from a mere stuffing of the memory with the contents of books. Its most essential part is the strengthening of the mental faculties, and creating in them the habit of right action.

§ 368. Every practising lawyer knows that nine-tenths of the questions put to him by clients are such as could not find their exact answer, in precise terms, in any law book contained in any law library, however large. This fact grows out of the multiplicity of human things, and the other fact, that the past never precisely repeats itself. The likenesses of the past, more or less exact, are constantly before us in the present; but the dead forms which have gone by, have no resurrection, except a sort of spiritual one, not in identical flesh and blood. The consequence of which is, that a practised skill is always called into exercise when the lawyer undertakes to advise a client upon any legal question.

§ 369. But, again, the giving of advice to clients on law points does not comprehend the whole of a lawyer's duty. He is to draw legal instruments, involving large pecuniary interests; and, in this work, a peculiar skill is called into exercise. No book can, in the nature of things, teach a lawyer just how every legal instrument should be worded. It requires the exercise of educated mental powers, as well as mere legal learning, to do this sort of professional business well. And the education needed is not a mere general one, such as is gained in schools of ordinary science and literature: it must be *legal*.

§ 370. So, when a client with business acquire-

ments, but not legal, comes to a lawyer to know how he may best shape his business affairs to avoid trouble in the future, there is a peculiar kind of educated skill called into action. In the nature of things, this skill cannot be guided by a law book, even in so high a sense as that in which it may furnish a form for a contract. Yet it is a part of the student's business, while he is preparing himself for the practice of the law, to acquire this particular sort of educated skill.

§ 371. Moreover, when a lawyer brings an action in court, or defends one there, he is required to exercise a peculiar educated skill in giving shape to the demand or the defence. It is not always sufficient for him merely, if he is for the plaintiff, to present a claim which can be sustained in law, upon facts which may be proved; or, if he is for the defendant, to draw up in due form the like defence. There is often a wide election left to the lawyer, and he who is skilled in his profession will choose the course which will cast upon his client the smallest burden of labor, proofs, money, and other things of the sort; and will be, on the whole, easiest, safest, and best.

§ 372. If a cause goes to trial, there is certainly a skill to be exercised then; and this, as in the other instances, must be an educated skill. Mere natural cunning, or cunning educated after any other order than the legal, will not avail much at such a time. The cunning, or skill, must be educated for this particular service.

§ 373. The foregoing are mere illustrations of the larger truth, that, if one would be a successful lawyer, he must be educated for his calling; and the educa-

tion must consist of such preparatory discipline as will fit his legal powers for the performance of the particular work which they will have to do. Merely to stuff one's head with reading is not education in any thing; and especially it is not in the law.

CHAPTER XXI.

PROCESSES OF LEGAL EDUCATION.

§ 374. BEFORE we enter upon the consideration of particular processes of legal education, let us refresh our recollections by a few further statements of what is, and what is not, the object to be accomplished. In the first place, mind, like a tree, grows from a little germ to the perfected trunk, limbs, and overshadowing boughs. And, as there are great varieties of trees, so there are of minds. We do not plant an acorn and say, we prefer a cedar, and mean to educate the little thing to be one. We may help the acorn to become a beautiful and well-proportioned oak; but we can never make a cedar of it, even a poor cedar. So education can assist the growing mind to perfect its own particular nature, but it cannot create for it a new nature, different from what it received from God.

§ 375. If, then, a young law student says, "I will be a second Rufus Choate," he exhibits herein a folly which argues an incapacity to be a second any thing; his place on the scale is, at least, as low as two hundred. Or, if he draws an ideal pattern of a lawyer, and says, "I will fill myself up and cut myself down to it," he commits an equal folly. Some educationists have said, "Give yourselves most to those things which

you most dislike, and for which you have the least capacity; and restrain yourselves, and devote the least study, where your capacity is greatest." This is to advise the acorn to become a cedar. This is not education, but an attempt to create a being contrary to the laws of nature.

§ 376. It is presumed the readers of this chapter have already ascertained that they have minds naturally adapted to the study and practice of the law. But the law is a vocation calling into exercise a considerable variety of talent. A man may be a lawyer and not be an advocate. On the other hand, he may be a pretty successful advocate, yet not entitled to quite the highest success, without the capacity to become truly profound in legal knowledge. If a man of the former class should determine to practise exclusively as an advocate, or a man of the latter class should resolve to confine himself to chamber practice, the mistake would be as great as when one wholly unadapted to any legal pursuits enters the law.

§ 377. The consequence is, that, contrary to advice sometimes given law students, each student should ascertain the peculiar element of legal power which is his by nature, and cultivate that, not to the exclusion of the rest, but in advance of all. The result will be, not that he will become a person of universal legal capabilities, but that he will excel in at least one thing, which is more than can be said of most men. In other words, the wise young man will cultivate the capacity which God has given him, instead of attempting to create what is not given: thus, walking in the path of obedience to the law of nature, he will

receive the reward of well-doing, in success and happiness attendant on his professional career.

§ 378. If a young man is ambitious for a particular kind of fame, it may be mortifying to him that he cannot get it; but he had better take his mortification in advance, by turning from a path of disobedience to a law of nature, into the path of obedience, than to drink it in during a storm of scorn following an actual public failure. It is presumed, therefore, that the readers of this chapter have resolved to make most prominent those studies for which they are best adapted.

§ 379. But no considerate young man will read books, on any legal subject, faster than he has capacity to appropriate their contents, and make them his own. There is a great difference in men in this respect, so that the capacity of one should not be taken as the measure of that of another. It is not always the ablest mind that reads and appropriates the fastest. Moreover, the learning of some men seems to go even in advance of their reading, while that of others lags very much behind; and it is necessary for some to read several times as much as others, to acquire the same amount of actual available knowledge.

§ 380. In these views the reader will see reasons, in addition to those mentioned in a previous chapter,[1] why the author does not deem it wise to undertake, in this volume, to lay down an exact course of law reading, with the names of all the authors to be read. What is well for one man will not always be so for another.

[1] Ante, § 313–317.

§ 381. Mr. Warren, in his Law Studies, recommends particular books, and extends his lists to great numbers. Mr. Hoffman, the American writer, does the same. A young man, even though a rapid reader, must be very extraordinary in every other respect, if, after reading, within the longest time allowed for law studies, all the books mentioned by these writers, he finds any mental power left within him, of any sort whatever. Still it must be acknowledged that there are some men who can stand enormous doses of books, and not only survive the operation, but really gain a good deal of mental strength thereby. The dose, in other words, should in all cases be suited to the patient.

§ 382. A writer in the London Law Magazine, reviewing the second edition of Mr. Warren's book, says: "We admit, but not without some misgiving, that it may be advisable for the law student to read Stephen's Blackstone, Williams' Elements of Real Property Law, Smith's Leading Cases, Stephen on Pleading, and Mr. Warren's Introduction to Law Studies, as a preliminary preparation for his more profitable exercises. These will occupy a few months: at least, they ought to do so; for many parts of these books require to be read twice over. Then, if the student aims at being a really competent practitioner, prompt, versed, and learned, let him plunge at once *in medias res;* let him give to the winds all that Mr. Warren says about all sorts of reading on all sorts of subjects, pertinent and impertinent, and, betaking himself to a pleader's chambers, grapple at once with actual business, taking especial

care to ask for the easiest papers at first, and moreover to attend to cases for opinions. Let him eschew text-books as he would poison; they give little but valueless abstractions. Let him in all cases drink deeply of the reports; there it is that he will find real law, in the splendid judgments of the first common lawyers this country has ever known. Let students dig deeply into this mine of sterling, thoughtful reason. But let this be done in actual practice, or for a present purpose: no man can possibly retain what he reads without any definite object, nearly so well as that which he works up for practical application to work in hand. This system calls forth and strengthens the power of discrimination, which no vague, objectless reading does; for every case referred to must be nicely examined, and the principle it develops well considered, in order to ascertain how far it applies to the case in question. In this way, stores of law are not only acquired, but retained.

§ 383. "As to text-books," the writer goes on, "they are little else than bad indexes. Harrison's Digest is the true index, the reports the sole trustworthy text. Let the student especially read, mark, learn, and ponder over those judgments in the books which dive into principles. *Obsta principiis.* Dicta are comparatively useless to the learner; they will but little assist the judgment; and to the judgment and the reason must the lawyer trust for the application of that which depends on principle and is the essence of reason. Nothing is less arbitrary than our glorious common law. The judgments of Lord Mansfield, Lord Kenyon, Mr. J. Bayley, and Lord Tenter-

den outlive their time, and will endure as monuments of law for ever. Why? Because they lay down *principles*. Let the student especially mark these matchless emanations of great minds. In our own day [1845], the judgments of Tindal, C. J., Lord Denman, C. J., and the late Lord Abinger, C. B., are worthy successors; and we have often heard it said that there is no better study than the judgments of Tindal, C. J., which begin in sixth Bingham, and run through the subsequent reports. We do not recommend any such consecutive reading, knowing its necessarily tesselated character. It is much better to read the great judgments upon given points as they occur, and gather in and store the various principles by which they are determined."[1]

§ 384. In other connections[2] the author of this volume has stated his own views concerning the use of text-books by law students: and he deems that he has shown, if any thing is shown in this volume, the absurdity of reading the kind of books which the reviewer, in the foregoing extract, describes as "treatises;" being, in the language of the present author, mere digests, and inferior ones at that. Still it does not follow that books which are real treatises ought not to be read, and the author of this volume deems the argument in favor of their use to be conclusive. Moreover, it accords with the views laid down in these pages, as well as in the above extract, that the reading of the student, be it what it may, should not extend much beyond productions of real

[1] 34 Law Mag. 283, 284.

[2] Ante, § 79, 170–200, 215, 228–231, 247 et seq.

ability, whether they come from the judges, or come from text-writers.[1]

§ 385. Still, the assumption of the reviewer that legal ability flourishes only on the bench is false in fact, and is a foul aspersion of the whole bar of the nation. Blackstone wrote his Commentaries while he was a briefless barrister, retired to Oxford because he could not get business in London; and, when he became afterward a judge, he did nothing equal to this his early effort. Coke upon Littleton was produced while its author was unseated from the bench, which the king and his advisers deemed him unfit to fill. And, in our own country, Kent's Commentaries were the offspring of a man legally demented by age, who, therefore, was not permitted to hold his former seat as judge. Either these men occupied the bench unworthily, at times when they did not write, or legal ability and learning are not confined to the bench.

§ 386. The utility of reading reports, in the way mentioned by this reviewer, is evident, and is admitted by all lawyers. Still, even in England, and much more in this country, this sort of reading is attended by its embarrassments. In the first place, with us, if the report is any other than of our own State, we do not know, unless we have at hand some proper book to tell us, whether the doctrine of the case is received out of its own locality as sound in law, and especially whether it is the law of our own State. And in no circumstances do we know, without aid from

[1] Ante, § 77, 247, 267.

auxiliary books, whether it has not been subsequently overruled. Moreover, the student does not always perceive, however it may be with his instructor, whether it is not wrong in principle, such as ought to be overruled whenever occasion presents itself. This is a very important matter, on which the law treatise does, or should, shed light.

§ 387. Again, if the author of a law treatise is as able a lawyer as the judge, his disquisitions upon the law are, as a general rule, more nicely accurate than those of the judge can be. The legal author goes over an entire subject carefully, with all the authorities before him, and with the opportunity to consider each part in its relations to every other part, and to the whole, before he publishes his book. The judge is compelled to dip into a great variety of subjects, without having any one before him in all its parts, and generally he has before him only the authorities to which he is referred by the respective counsel, though he may extend his investigations further, and sometimes does. It is the duty of the judge to decide no more than the simple question in controversy; and, if he goes beyond, and enters into a legal disquisition, extending beyond the mere point, after the manner of an author, "Almighty God"[1] ceases to be with him and to help him, because he ceases to be in the line of his duty. On the other hand, the legal commentator who does this has the help, because he is in the path of duty. This particular proposition, indeed, seems untenable to some who are

[1] See ante, § 161, 164, 170, 197.

not lawyers; but *lawyers* are supposed to know that obedience to law, though only a law of nature, brings its reward, and disobedience its penalty.

§ 388. The student, therefore, will be cautious in heeding any advice which is based on the erroneous proposition, that the arguments framed by judges in giving their opinions in causes depending before them, are the law, in a higher sense than are the reasonings of text-writers in legal treatises. Yet both are to be resorted to, and each in its proper place, by him who would become thoroughly fitted for legal practice.

§ 389. The student, who is reading his treatise, should not read too fast. He should be careful to digest what he thus takes into his mental stomach. Before him should lie the statute book of his own State; and, by constant reference to the index, or to the book in some other way, he should inform himself whether there has been any legislation affecting the doctrine of the text. If there has been, he should read the statute; and, if the text-book is his own property, he should note the alteration with his pen in the margin, accompanied by a reference to the statute.

§ 390. In the same manner, while the student reads his text-book, he should have lying before him a digest of the decisions of his own State, and he should have the reports close at hand. Let him then constantly refer to the digest in the same way as to the statutes; and, exercising a sound judgment of his own, let him take down the reports and read a portion of the reported cases, more or less as he deems

best, at proper pauses in the reading of his text. If his text-book refers to the decisions of his own State, he will look at its references in connection with those of the digest.[1]

§ 391. The student will also, in this way, read more or less of the decisions of courts other than of his own State, in connection with his reading of the law treatise. It is impossible to say, in advance, how far this sort of reading should extend. It may be carried too far, or it may be made too limited. The student who cannot trust his own judgment in this, can hardly trust it in weightier matters which will come by and by.

§ 392. But there is still another way in which reports should be read, besides that mentioned by the reviewer above. There is nothing so important for the practitioner as to be able to say, at a single glance cast upon a decision, just how far it is binding as authority, supposing it is not to be overruled. The student should, therefore, read case after case; and make, as he goes on, his own abstracts of the points decided therein, cut down to the smallest possible dimensions, yet not so close as to pare off any thing which the case absolutely decides. There is no exercise more important than this; and it is especially one to be advantageously done by students in a class, under competent instruction; as, for example, in a law school.

§ 393. To aid in this exercise, it will be useful to note here some of the rules relating to it; though the

[1] And see ante, § 303.

leading ones have already been mentioned in these pages:[1] —

1. Whatever may be the language of the judges, the decision, as a precedent in the strict sense binding in future causes, extends no further than the facts involved in the case as appearing in the record.

2. It is not binding as to any matter to which the mind of the court did not advert, even though within the record facts.

3. It is not binding as to any point not necessary to be passed upon, in order to decide the cause.

4. As to the reasons given by the judges in passing upon the questions necessarily involved in the cause, and strictly within the record, these are in a qualified sense to be regarded as of the law of the case; but they are not absolutely so. If other sufficient reasons can be discerned, on which the case could well rest, we may reject the reasons given by the judges, and accept the other reasons as the true ones; for this does not involve the overruling of the case. And, in short, whatever may be rejected from the case, without overturning the result, is not, in the most absolute sense, a part of the law of the case.

§ 394. Many a lawyer has lost his cause, by reason of not being able to get rid of a previous decision, which, to the casual eye, seemed conclusive of the matter against him, while it was not so in fact. Sometimes a case of this sort is sprung suddenly upon one, in the midst of his argument before a court. To be able to pierce through the matter at a glance, and

[1] Ante, § 161–168. And see 1 Bishop Crim. Proced. § 1030–1036.

see and state at once the limits of the authority, and show that they lie outside the case in argument, is a very necessary qualification in him who is to appear before a court. Even in chamber practice, the capacity to do this is essential, though here it does not call for so sudden an operation of the mind.

§ 395. If the reader will turn to the case of Green *v.* Commonwealth, reported in the twelfth volume of Allen's Massachusetts Reports, and explained as to some points in a note in the second volume of Bishop on Criminal Procedure,[1] he will find some very good illustrations of the matter now under consideration. In this case, according to Allen's report, H. W. Paine, of counsel for the prisoner, made the following statement of the effect of two previous decisions: "It has been twice adjudged by this court that under our statutes murder, though of two degrees, remains one kind or species of offence; and that the facts and circumstances which raise an offence from the second to the first degree, though not set out in the indictment, may be proved on the trial to the jury." Now, the note in Bishop's Criminal Procedure will show, that, in the first of the cases alluded to, the point was not necessarily involved, therefore, though there were *dicta* to the effect thus stated by counsel, they did not become, in the strict sense, a part of the adjudged law of the case. The note also shows, that, in the second of these cases, though the point was involved in the facts, it was not so presented to the judicial understanding that it can be said to have been passed upon; conse-

[1] Green *v.* Commonwealth, 12 Allen, 155; 2 Bishop Crim. Proced. § 588, note.

quently this case did not, in the strict sense, embrace the adjudication thus stated by counsel. But, when the opinion of the court, as reported by Allen, was pronounced, sustaining the indictment as sufficient, the learned Chief Justice, who delivered the opinion, fell into the precise error for which counsel had thus led the way. He said, referring to the two previous cases: "The logical and necessary conclusion from these decisions is, that an indictment for murder in the common form does charge murder in the first degree. Indeed they can be maintained on no other ground."[1]

§ 396. Here is an instance in which, to the eye of a person who looks no deeper than outside appearances, as the case stands in the authentic report by Allen, a very able lawyer, pleading for the life of a prisoner before the highest legal tribunal of his State, commits the error of making, against the interest of his client, an admission that the law had been adjudged as it had not been, in consequence whereof he loses his case, and the client is hung. If this were really so, no words could be employed adequate to express proper regret that counsel should not have been better informed upon the question of the legal effect of decisions as precedents, or should not have used greater care. In an ordinary case, involving mere pecuniary interests, one feels unhappily to see a rightful cause lost by the blunder of counsel; much more so, when the result involves the loss of human life. Therefore let the student be admonished, that

[1] Green *v.* Commonwealth, 12 Allen, 155, 160, 171.

one of his first duties is to learn to discern the effect of decisions as precedents.

§ 397. In this particular instance, however, when we look below the surface, as the matter is explained in the note before mentioned, and see how it became necessary for the prisoner's counsel to pin the court to its previous *dicta*, and cause it to follow those dicta as law without inquiry, in order to avoid a particular kind of reversal of judgment with its particular effect, and obtain another kind, we are impressed more with admiration of the self-sacrifice shown by counsel for the sake of the client, than with any thing else in the whole case, notwithstanding that the apparently well-laid plan for the saving of the life of the client did not succeed. Yet the question occurs, how, even to attain so high an object, considerate counsel could make this erroneous statement regarding the effect of these previous decisions.

§ 398. The most obvious answer to this question is, that, when one appears before a court to *argue* a question of law, he *argues*. In this instance, it was fair matter for legal *argument* what the authoritative effect of the previous decisions was; the counsel did not misstate those decisions; to have done so would have been wrong, it would have even amounted to a violation of his official oath, which bound him to be faithful to the court as well as to the client. But he stated the *legal result* which he wished the judges to accept, as derivable from the cases before them. This is the true answer to the question. Yet it may also be said, that, by reason of the imperfection of language, words are often necessarily employed in a

vague way: and a dictum of a court, relating to the precise matter in hand, as in one of the cases referred to; and an actual rendering of judgment, as in the other case, in a matter upon which the judicial mind did not really pass; are often spoken of as solemn judgments, in precisely the language which the counsel actually employed. In a certain sense they are so, yet not in a sense to render them strictly binding as precedents.

§ 399. If, again, we turn to the language of the court, as already quoted,[1] we see that it is a very inadequate, and, accurately measured, a very incorrect statement of the principle which guides the judicial judgment in determining the effect of previous decisions. Said the learned Chief Justice: "*The logical and necessary conclusion* from these decisions is, that an indictment for murder in the common form does charge murder in the first degree. Indeed *they can be maintained on no other ground.*" Now, if we should carry each decision, recorded in the books of legal reports, to its "logical and necessary conclusion," and should draw from it every doctrine which could be drawn of such a sort that the decision "can be maintained on no other ground" than on the doctrine thus drawn, our law would assume at once the aspect of a chaos of contradiction and absurdity,— a bedlam of dark things, instead of a system of harmony and light. This is a simple fact, known to every man conversant with our books: it was, of course, known to the learned judge; but, in the haste which

[1] Ante, § 395.

necessarily attends the delivery of judicial opinions, it is impossible the judges should employ language with the accuracy demanded of text-writers.[1]

§ 400. To show that this is so, let us turn to some cases which had already occurred in the same court. In the second volume of Pickering's Massachusetts Reports, we have the case of Commonwealth *v.* Carey, which was an indictment for the criminal uttering of a counterfeit bank-bill, described in the indictment to be of "the following purport and effect, to wit," and then the instrument was set out. After a verdict against the defendant, there was a motion in arrest of judgment by reason of alleged insufficiency of indictment; but the motion was overruled, and the indictment was held to be good.[2] Other cases also occurred, in which the words "purport and effect" were used to introduce the setting out, in the indictment, of the written instrument which constituted the foundation of the charge against the defendant; and, in these cases also, the indictment was pronounced good by the court.[3] But when afterward the same matter was brought before the court in Commonwealth *v.* Wright, this form of the indictment was held not to be good, and the particular indictment was quashed on motion in arrest of judgment. Yet the judges did not consider that they were overruling these or any other former decisions; because, in the language of Forbes, J., who delivered the opinion, the former cases were

[1] Ante, § 387; 1 Bishop Crim. Proced. § 1074.

[2] Commonwealth *v.* Carey, 2 Pick. 47.

[3] Commonwealth *v.* Parmenter, 5 Pick. 279; also, other cases referred to in 1 Cush. 60.

"evidently decided without much consideration; the correctness of the practice, it is true, seems to have been taken for granted; but the precise question here raised does not appear to have been suggested to the court."[1] Yet the reader will observe, of these former cases, that, according to "the logical and necessary conclusion," to be derived from them, the form of the indictment employed in Commonwealth *v.* Wright does sufficiently charge the offence. "Indeed, they can be maintained on no other ground."

§ 401. Turning again to the case of Green *v.* Commonwealth, as reported by Allen, we find, that, according to the head-notes of the reporter, one of the points decided was the following: "Under the statutes of this Commonwealth, an indictment for murder, in the usual form, is sufficient to charge the crime of murder in the first degree."[2] To a person familiar with the law of criminal pleading in cases of felonious homicide, the most obvious remark upon this enunciation of the point is, that, though it conforms to some language used in the report itself, it is destitute of precision; because there is no "usual form" of the common-law indictment, some of the forms in common use being such as to avoid the objection made to this indictment, and others not. Then, to a person inquiring after general points in the law it means nothing, because the statutory words are not given. If we take into the account the statutory words, and the previous rule of law, we shall find that

[1] Commonwealth *v.* Wright, 1 Cush. 46, 64. See, also, 1 Bishop Crim. Proced. § 1036 and note.

[2] Green *v.* Commonwealth, 12 Allen, 155.

the following will be a more accurate note of the point, as adjudged in this case: *The law having provided that all homicides committed of "malice aforethought" shall be adjudged to be murder, if then a statute is added, making such of these as are perpetrated with "deliberately premeditated" malice aforethought murder in the first degree, leaving the rest to be murder in the second degree, an indictment charges that a particular killing was of "deliberately premeditated malice aforethought," and so in the first degree, if, omitting the words "deliberately premeditated," it says, simply, it was of "malice aforethought."* To be sure, such a head-note as this would seem to be out of place as showing the decision itself to be absurd; but it is precisely what was decided, namely, that the part of a thing is equivalent to the whole. Hence the decision is wrong to the extent, that no number of repetitions of it could make it right, or make it law.[1]

[1] See 1 Bishop Crim. Proced. § 1038–1045; 2 Ib. § 595, 596; post, § 455, 456. A writer in the American Law Review, vol. i. p. 374, in a notice of my work on Criminal Procedure, mentions this case of Green, and takes occasion to berate me roundly for having ventured to dissent, in my own way, from the conclusion arrived at by the court. Taking upon himself the part of champion for the court, he says: "The question on which Mr. Bishop differs from the court is simply this, — Do the words 'malice aforethought' include [that is, according to the case as presented on the record, do they *cover in allegation*] deliberately premeditated malice aforethought, together with other kinds of malice aforethought, or do they not? [In other words, the law having distinguished between simple 'malice aforethought,' and '*deliberately premeditated* malice aforethought,' so that the former may and does exist without the latter, and the latter is a thing more heavily punishable than the former, — if, now, a man, or a body of men called a grand jury, says a person did so and so of 'malice aforethought,' which is the less heinous thing, does this accuser charge thereby, that the person did the act also of '*deliberately premedi-*

§ 402. These illustrations will show the importance, to the student, of being familiar not only with

tated malice aforethought,' which is the more heinous thing? In still other words, — Is it an allegation that an act of malice aforethought was done *with deliberate premeditation*, to say simply that it was done? Or, again, — Is a thing alleged which is not alleged?] The Supreme Court of Massachusetts, after solemn argument in a matter involving the life of a human being, have decided this question in the affirmative, by an opinion declared to have been unanimously concurred in by six judges." This writer, it is seen, states the point precisely as I have done in the text, and did just now in the brackets. But he does not attempt to show how it is, or how it can be, that an allegation which covers only half the words of a statute, and half their meaning, is equivalent to one which covers the whole. And it is futile to undertake to make the members of a learned profession, like ours, in this age when men will look and think for themselves, drink down nonsense by force of the mere crack of the whip, saying, "Thus it has been decided by the Supreme Court of Massachusetts, after solemn argument involving the life of a human being, by an opinion declared to have been unanimously concurred in by six judges." The truth is, the "opinion" upon this point was a mere oversight, a sort of slip, which will sometimes happen with the ablest men; caused, in this instance, by the fact that it was not for the interest of the respective clients to have the court enlightened on the point; therefore the counsel, on both sides, walking in the path of duty as they severally discerned it, carefully abstained from imparting the light. This will appear on examination of my note, 2 Bishop Crim. Proced. § 588, note. The reader who may care to look fully into the subject will see, that every thing which the reviewer says about the note is more or less incorrect, and some things are diametrically untrue. It is needless to undertake to defend the decision in such a case, especially by such means. I have given for the judges, here and in that note, the proper explanation, showing that they are not to be blamed for a slip which is common to human nature under like circumstances; and this is all which, with proper regard for law and the facts, can be said in their behalf. Any further taking up for them, particularly by one who cannot venture so much as an attempt to sustain the decision in matter of juridical reason, is simply absurd. It is never pleasant for an author, who is a human being like the rest of mankind, to hold out to public view an error committed by men whom he knows personally, whom he is in the habit of meeting day by day, and for whom he entertains the highest personal and professional regard and esteem; even though, as in this instance, it is done in obedience to a high duty, which could not by any means short of

the rules which determine the extent to which the authority of a decision reaches, but with the practical application of the rules. No student or young lawyer can exercise his mind too much in this direction. And, if students are so situated as not to have the advantage of this sort of exercise in class, under the guidance of an instructor, they will do well to agree on certain cases to be reduced to their smallest proportions in the way described, then to meet and compare their work, and discuss among themselves the various points, and the methods by which the points are evolved.

§ 403. The student should remember that his object is to make himself both a profound lawyer and an expert practitioner. Neither should be sacrificed to the other. Therefore he should study profoundly, and at the same time keep in view the practical application, to actual professional business, of the learning which he acquires. In connection with this subject, Hoffman makes a suggestion well worthy to be considered: "As the books of entries and precedents," he says, "contain the most approved forms which may be required in a very long and extensive practice, if the student should early habituate himself to the perusal of these forms and precedents, he would become intimately acquainted with most of the practical proceedings; and, in the future prose-

absolute recreancy be cast off or avoided. And when reviewers come to know their duty also, if such a time should ever be, they will select something other than an act like this, wherewith to show their impartiality by belaboring, in the latter part of an article, an author whom they have puffed in a former part. At any rate, when they speak on such a subject, they will speak the truth.

cution of his professional business, would seldom or never, if informed of the *law*, be unacquainted with the *modus operandi*.

§ 404. "It cannot be questioned," he continues, "but that the *forms* constitute a great portion of that practice which it is the student's aim, by a long and tedious apprenticeship in an office, to attain. . . . We strongly recommend a familiar acquaintance with the most approved books of precedents, as a means of nearly superseding his service in an attorney's office. On this point, we state with confidence, arising both from experience and observation, that a greater fund of useful and practical knowledge may be acquired in a *few months* from these books, than most students attain by the performance of the customary duties of an office in as *many years*. But let it not be supposed that we would place these volumes of entries and precedents in his hands to be read continuedly, and in the usual mode of reading other works; for it is without hesitation admitted, that books of forms, both as to matter and style, are exceedingly dull and uninteresting; certainly too much so to be perused in the ordinary manner. That, however, which the mind rejects in one shape, may be received with pleasure in another: like a chemical menstruum, it may be saturated with one species of matter, and imbibe with avidity what is of a different nature. . . . Most men, however industrious and judicious in the occupation of their time, have periods of leisure which are not embraced in their *settled hours of study*. Let some of these little vacancies of time be devoted to this species of reading: let the student

occasionally take up a book of forms, and read a half or a quarter of an hour, noting with a paper his gradual progress through the volume; let him never fatigue himself with this species of reading, but frequently resort to it as a short repast, which is to occupy the fragments of time, and not to interfere with the hours of study, rest, and relaxation. [It is not plain, to the writer of this volume, precisely where these 'fragments' are to be found; but never mind; the general spirit of the direction is good.] By this practice much time will be usefully saved, which would otherwise be lost; the student slowly, and almost imperceptibly, gains a very useful species of knowledge; practice is thus united to theory; and, if he has been otherwise studious, he appears, as it were *per saltum*, before the world, not merely the closet lawyer, but the practitioner and the man of business."[1]

§ 405. It seems to the writer, that, while these views by Hoffman are, in the main, correct, it will be found practically convenient for the student to use the books of forms much as he has been recommended in previous pages[2] to do the reports and statutes of his own State. Let him, while reading the heavy works of solid law-learning, make occasional excursions into these form-books, and even into the practice-books, where they relate to the same subject as the more solid reading: thus, while he is varying the action of his mind, and giving it a sort of rest, he is acquiring most important legal

[1] 1 Hoffman Leg. Study, 2d ed. 375, 376. [2] Ante, § 389–391.

knowledge and skill. A little mixing of forms, in the books themselves, which treat of the heavier subjects, is, it seems to the writer, an excellent method in authors who aim at the instruction of students; but, since our treatises are not generally thus written, the student may derive substantially the same benefit by pursuing the method of reading thus suggested.

§ 406. There are writers who hold it to be a primary rule, that the student should read right on in his treatise, never pausing, never turning to the right or the left; but right on he should go, through chapter and book, over crag and through bog; right on, on, on to the end. If law-learning consists in mastering a given number of elementary treatises, and this is all, such a direction is most judicious. Then he who should get up an invention by which men could read by steam, would be the great educational benefactor of the world. But since law-learning, of the practical sort, is a thing quite diverse from this, the method is not much to be commended. Undoubtedly each day should witness a certain progress made right on through the heavy treatise; but this progress should be accompanied by those peculiar side rests, which are also work and progress in themselves. As well might the physician advise the convalescent patient to eat right on, right on, to the end of the leg of mutton, as for the adviser of the law student to give the like advice regarding the heavy law treatise.

§ 407. At the same time, heavy, hard work at solid reading should not be undervalued. The au-

thor remembers, with great satisfaction, some experience of his own while a student in a law office. His custom was to rise early, and devote several hours to hard reading, "right on," in his treatise, at his lodgings where he had no side books to refer to, before going to the office. Arrived at the latter place, he plunged into business, read his treatise in connection with the side books, looked into questions of practice, into forms, into every thing, and did any thing, which the circumstances or the calls of the hour seemed to demand. And he is satisfied that in this way he made all the real progress which his mental and physical endowments rendered practicable.

§ 408. Mr. Hoffman adds: "We further advise the student, if the public records be accessible to him, to read occasionally the entire record of a case, carried from an inferior tribunal to the Supreme Court. The perusal of a few records of this kind would impress on his mind a distinct view of the whole routine of an action, from the impetration of the original writ, through perhaps a hundred different forms or entries, to the return of the executory process."[1]

§ 409. In law schools, the practice acquired at moot courts is of considerable avail. This is an old method, always recommended, and adopted more or less by law students everywhere. Fulbeck, who in 1599 wrote and published a "Direction or Preparative to the Study of the Law," says: "Gentlemen students of the law ought by domestical moots to exercise and conform themselves to greater and

[1] 1 Hoffman Leg. Study, 2d ed. 376.

weightier attempts; for it is a point of warlike policy, as appeareth by Vegetius, to train young soldiers, by slight and small skirmishes, for more valorous and haughty proceedings. For such a shadowed kind of contention doth open the way and give courage unto them to argue matters in public place and courts of record. And it will not be amiss sometimes to reason together before men of more reading and greater judgment which may friendly admonish them, and, if they err, reduce them into the right way." And he makes a valuable suggestion concerning the proper subjects for moots. He says: "It is good to bring such matters into question as be disputable, and may deserve argument; for it were a vain thing to make a doubt of that which is plain and manifest; as whether a rent or annuity ought to be paid to a dead man, or whether a man may commit an offence against the law without punishment, and such like." [1]

§ 410. But what is better in most respects than mere moots, is practice in actual causes, before justices of the peace. If these magistrates were always intelligent lawyers, and competent in their calling, such practice would be very valuable indeed. As it is, it furnishes the student with exercise for his powers in those real causes which more fully tax his ingenuity, and illustrate his defects, than any mere moots could do. He should be careful not to accept as law the rulings of a mere uneducated magistrate, and thus mingle false doctrine, in his memory, with the better views which he obtains from his books. But it is a most useful

[1] Fulbeck Study of the Law, Stirling's ed. of 1808, p. 107, 108.

acquirement for a lawyer to be able to manage and direct, on questions of law and fact, an uneducated mind, performing the functions of a judge. Juries, it should be remembered, are always uneducated in legal questions, yet their opinions must be swayed by the advocate. Such efforts will teach the young aspirant for legal fame one lesson, if no more; namely, that mere bombast and lofty address cannot carry juries; there should be pertinent evidence, followed up by clear elucidation, and calm appeal to the serious judgment.

§ 411. This chapter, to many readers, will seem incomplete. There are those who would have an author tell them what book should be read first, how many and what hours should be spent per day in reading it, how many pages should be gone over per day and in how long a time it should be finished; what book next, and so on. To some persons, things like these appear to be the peculiar office of a work upon law studies, without which the object proposed remains wholly unaccomplished. Such, however, are not the views of the author. It has been before said in these pages, that the minds of young men are not machines; or, if they were, that the machines are not all alike. Each mind is committed, by its Creator, to its own keeping. Law students are, or should be, young men who have learned to take charge of themselves. They must manage themselves according to their own several natures. The author proposed to himself to do what he could to help them, but not to take the work out of their hands. Let responsibilities rest where God and nature placed them.

CHAPTER XXII.

NOTE-TAKING AND ABRIDGING.

§ 412. Fulbeck, who wrote, as already observed, in 1599, which was just in the dawn of Lord Coke's day, thus sketches the available sources of common-law knowledge: "The common law is for the most part contained in all the books called the Annals of the Law, or Year Books; all which are to be read, if the student will attain to any depth in the law. In them he shall see notable arguments, well worthy of pains and consideration. The two late reporters are Mr. Plowden, and Sir James Dyer, who, by a several and distinct kind of discourse, have both labored to profit posterity. Some humors do more fancy Plowden for his fulness of argument, and plain kind of proof; others do more like Dyer for his strictness and brevity. Plowden may be compared to Demosthenes, and Dyer to Phocion, both excellent men, of whom Plutarch reporteth that such things as were learnedly, wittily, copiously, and with admiration dilated and delivered at large by Demosthenes, were shut up in few words, compendiously recited, and with admiration handled of Phocion."[1] He then mentions the few writers of treatises and digests known in this ante-Coke period.

[1] Fulbeck Study of the Law, Stir. ed. of 1808, p. 69, 70.

§ 413. It is not wonderful, therefore, that from this writer, living in such a time, we should have the following directions to law students: "It is a profitable course under titles to digest the cases of the law, into which they may transfer such things as they have either heard or read. Neither is it safe to trust to other men's abridgments, which are little available to such as have read a little; but that which we by our own sweat and labor do gain, we do firmly retain, and in it we do principally delight. And I am persuaded there hath never been any learned in the law, and judicial, who hath not made a collection of his own, though he hath not neglected the abridgments of others." And he, like some other writers after him, seems to regard this sort of work as an important means for strengthening the memory, adding: "The memory is specially to be helped and increased of the student; for, though it be the gift of nature, yet by industry it becometh more excellent. For the integrity of the memory it is good to have sound health, and convenient digestion of the meats, and a mind free from all other thoughts. It helpeth it much to make good divisions; for he that divideth things aright, can never err in the order of things. . . . If the understanding be good and the memory naught, a man shall be a lawyer to-day and none to-morrow. Wherefore in this part the student must excel, and that he may excel he must labor, and that he may labor he must have health, which I wish unto him." [1]

§ 414. In like manner, Sir Matthew Hale, writing

[1] Fulbeck, ut sup. 116–118.

in 1668, nearly seventy years later, while yet there were but few books of the law compared to what there are now, says: "First, it is convenient for a student to spend about two or three years in the diligent reading of Littleton, Perkins, 'Doctor and Student,' Fitzherbert's 'Natura Brevium,' and especially my Lord Coke's 'Commentaries,' and possibly his 'Reports.' This will fit him for exercise, and enable him to improve himself by conversation and discourse with others, and enable him profitably to attend the courts of Westminster. After two or three years so spent, let him get him a large commonplace book, divide it into alphabetical titles, which he may easily gather up. . . . Afterwards it might be fit to begin to read the Year Books; and, because many of the elder Year Books are filled with law not so much now in use, he may single out for his ordinary, constant reading such as are most useful; . . . and so come down in order and succession of time to the later law, namely, Plowden, Dyer, Coke's 'Reports' the second time, and those other reports lately printed. As he reads, it is fit to compare case with case, and to compare the pleadings of cases with the books of entries, especially Rastal's, which is the best, especially in relation to the Year Books. What he reads, in the course of his reading, let him enter the abstract or substance thereof, especially of cases or points resolved, into his commonplace book, under their proper titles; and, if one case falls aptly under several titles, and it can be conveniently broken, let him enter each part under its proper title; if it cannot be well broken, let him enter the abstract of the

entire case under the title most proper for it, and make references from the other titles unto it."[1]

§ 415. Since these testimonies in favor of note-books were given, times have changed: the law has assumed more the aspect of a science than it then wore, and books of the law, some of them well written, have multiplied. Still there are those, at the present day, who strongly urge upon the student the old practice of commonplacing. Mr. Hoffman, of our own country, in his "Course of Legal Study," amplified the old thought until it expanded into eight heads; and he actually recommends to the student to make eight different sorts of note-book, in a series, thus: "1. Note Book of Exceptions to General Principles. 2. Note Book of Abridgment of Statute Law. 3. Note Book of Remarkable Cases Modified, Doubted, or Denied. 4. Note Book of Leading Cases. 5. Note Book of Uncommon Titles. 6. Note Book of Obiter Dicta and Remarkable Sayings of Distinguished Judges and Lawyers. 7. Note Book of Books Approved or Condemned. 8. Note Book of Doubts and Solutions."[2]

§ 416. The natural habits of men's minds differ so much that it is difficult to lay down rules for all; but, it is believed, taking mankind as they average, the following will be found to be the sounder view of the subject. The making of note-books, when carried to the extent recommended above, is a great labor; and, though in some circumstances the note-book may be of use, the advantages derivable from it are not suffi-

[1] Sir Matthew Hale's Pref. to Rolle's Ab., pub. A.D. 1668.
[2] 2 Hoffman Leg. Study, 2d ed. 778.

cient to compensate for the mental and physical strength consumed in its construction.

§ 417. The argument of Fulbeck, and some others, that the making of the note-book strengthens the memory, seems, to the author, to be particularly unsound. On this point, the testimony of Mr. Warren is as follows: "The author [Mr. Warren] humbly ventures to suggest, that, in his opinion, — not hastily formed, nor without inquiry of eminent and successful lawyers, — this system of incessant transcription is one of very questionable expediency. He knows one individual who, with prodigious industry, had compiled four thick folio volumes, very closely written, and most systematically distributed; and who subsequently acknowledged to the author that it had proved to be one of the very worst things he had ever done; for his memory sensibly languished for want of food and exercise, till it lost its tone, almost irrecoverably. However urgent the occasion, he could do nothing when out of the reach of his commonplace book; and that could not be *kept up*, for practical purposes, without the most oppressive labor. He subsequently quitted the profession, and often bitterly regretted the time and pains which had been thus thrown away. When pursued to such an extent as this, the student never *reads to remember*, but only with a view to *insertion in his commonplace book:* he is satisfied as soon as what he reads is deposited there; and thus, at length, suffers the *hand* to engross the business of the *head*. . . . The author knows several instances of gentlemen who have now attained great professional eminence, who never kept a commonplace book,

nor made more than a few occasional memoranda of striking passages, in their lives; and who attribute the present tenacity of their memory, in a great measure, to their *avoidance* of commonplacing."[1]

§ 418. Another view, taken by the advocates of the note-book, is, that it helps to remember the particular things written down, — which is a different matter from its general effect on the memory. This and another point are urged by Mr. Hoffman, as follows: "It is a law of our nature that those impressions which simultaneously affect the mind through the medium of more than one sense, are more vivid and lasting than when only one of the senses is excited. Writing is a species of *touch*, and is an act which, from the time and attention necessarily required, must be favorable to the memory. Besides this, there is a pride in our nature which revolts at the servile transcription of what is not understood; the student, therefore, will be stimulated to additional inquiry; and, until he has sufficiently investigated the subject judiciously to abridge his author, or extract the substance, he will not record it in his note-book."[2]

§ 419. The reader has observed, that Lord Hale does not recommend the use of the note-book till the student has made considerable progress in his studies,[3] and Mr. Hoffman follows Lord Hale in this particular. The latter says the note-book may be commenced when the student has reached the "third title" of the course which he prescribes; but, "in reading the

[1] Warren Law Studies, 2d ed. 856, 857.
[2] 2 Hoffman Leg. Study, 2d ed. 777. [3] Ante, § 414.

preceding matter," he "better have no regular note-book. He may occasionally set down his views or doubts, but as a practice we would discourage note-taking, until he has acquired something of a *legal mind*, by a cursory view of the great *outlines* of legal science."[1]

§ 420. If commonplacing helps the reader to remember what is read, one would suppose that he should have this help in the beginning of his studies, when all is new to him, and the memory has to make a sort of double effort to grasp what is not so well understood as it will be after the earlier period of difficulty is passed. But, to the writer of this volume, it seems plain, that, with most persons, this entering of things in a note-book does not so strongly impress them on the memory as the same time and effort, spent in some other way, would do. And, upon this point, he is confirmed by the following testimonies, collected by Mr. Warren: "'Many readers I have found unalterably persuaded,' says Dr. Johnson, 'that nothing is certainly remembered but what is transcribed; and they have, therefore, passed weeks and months in transferring large quotations to a commonplace book. Yet why any part of a book, which can be consulted at pleasure, should be copied, I was never able to discover. The hand has no closer correspondence with memory than the eye. The act of writing itself distracts the thoughts; and what is twice read is commonly better remembered than what is transcribed.' 'Commonplacing,' says the illustrious Gibbon, 'is a

[1] 2 Hoffman Leg. Study, 2d ed. 781.

practice which I do not strenuously recommend. The action of the pen will, doubtless, imprint an idea on the mind, as well as on the paper; but I much question whether the benefits of this laborious method are adequate to the waste of them; and I must agree with Dr. Johnson, that what is twice read is commonly better remembered than what is transcribed.'"[1]

§ 421. A question like this is better settled by experience than by theory. The author's experience is, that, if he wishes to *remember* a thing, the last method available is to commit it to paper. This is, with him, to put it out of the jurisdiction of the memory. If with others it is different, their experience, and not the author's, will properly guide them. Let it be observed that the question is, not whether they can refer to the thing afterward in their notes; but whether they *remember* it, so that any reference to the notes is needless.

§ 422. Most persons, the author is quite convinced, will, if they test the point by personal experience, discard note-books as a means of assisting the memory, as well where the question relates to the particular thing to be remembered, as where it concerns the general strengthening of the faculty. Still, for other reasons, quite disconnected from this faculty of the memory, there are things which we wish to note down, that we may recur to them at a future time. Among these things is *not* the general legal doctrine which we find discussed in the books. In the days of Fulbeck and of Hale, when there were but few law

[1] Warren Law Studies, 2d ed. 857.

treatises, and few reports compared with the present number, and when there were no regular reporters to record and print for the use of the profession what was daily transpiring in the tribunals, there was need of note-books for reasons which do not now exist. But why should a student write down what, he knows, he will soon have in better form, printed for his use? There is labor in writing, there is wear of the brain, and there is exhaustion of the physical powers. Time flies as rapidly while one is thinking of the forms of the letters, and of the spellings of the words, as when the mind is revolving the great idea.

§ 423. But, as just suggested, there are things which must be taken down for future use. They do not so much occur when one is engaged in the study of the law, as when afterward he enters upon its practice. If, for example, a brief is to be made out, in a cause which is to be argued on a question of law before the court, the person making the brief needs to note down the authorities as he finds them. Then he collects his points, and writes them down, points and authorities together. In like manner, if a lawyer is looking up a question on which to advise a client, he should make such references as will enable him, if litigation is afterward carried on, to go on with the case without a fresh search into the books for what is already found. This is a labor-saving expedient.

§ 424. In all these instances, the minutes of points looked up, the briefs, and every thing else of the sort, should be preserved; because, at some future time, the lawyer preserving them may have a fresh case involving questions of law already gone through, and

he can save himself labor by calling up the old memoranda. This is a different thing from taking notes as a student. Here the notes were necessarily taken, in the course of business, and it would be a waste of what may be useful, to throw them away.

§ 425. But it does not occur to the writer why such notes, or any others, should be made in bound volumes of blank paper. Often one wishes to make a note when he could not have his volume with him. It must be taken on loose paper. If afterward he wishes to see his work in a bound volume, he can paste his written slips into a scrap-book.

§ 426. But if one is taking notes which he intends afterward to use about any literary performance, or a law argument, it is certainly worse than a waste of time to transfer them into any form of bound book. Let him take them on slips, the matter on no one slip extending beyond some minute division of the larger general subject. Let him put in the left-hand margin of each slip a word indicating the particular topic to which the slip relates. Then, when he comes to use his slips, he can distribute them according to these topics, as a printer distributes his type according to the letters. He can next re-distribute the matter of the several topics, and arrange and re-arrange it, and work as much order out of what was chaos as he chooses. If these slips were pasted in a book, or if their contents were originally written in a book, he could not do this.

§ 427. Of course, in all this, each one will have an order, or system; but it will be such as suits the habits of his own mind, and the particular exigency.

If a man is taking notes preparatory to writing a series of law books, he will have arranged the necessary drawers, pigeon holes, distributing boxes, and the like. If he is merely preparing, in this way, for some trial, or some argument, or some detached article, he will not need to spread out his work so widely. For most things of this sort, a simple file will answer. Where the notes are taken with no certain object, but from a vague idea that what is thus set down may be wanted at some time, the matter can be filed away, or put into drawers, or otherwise kept, till a purpose arises inducing its proprietor to look it over, and perhaps give it order, or perhaps separate some from the bulk, for a special use.

§ 428. Those who deem this method of note-taking slovenly will, if they prefer their ideas of order to practical convenience, discard it. The author states what he has found practically to be most convenient for himself, and what the little observation he has been able to give leads him to believe is so for the majority of other people. He will not answer for some isolated case of a peculiar mind.

§ 429. Still there are memoranda which had better be made in some other way than this. Thus, if you are in a city and own a directory, the margin of it will be the best place to note the residence of any person whose address you wish to preserve. In like manner, as the statutes of each year come out, you should look them over and note the changes and additions, in the proper places, along the margin of your copy of the Revised Statutes. So, when important, you can make references to reports and law

points in the margin of your copy of the Digest of the Reports of your State. Similar notes may also be inserted in your text-books. *But you should never write, or make any mark whatever, in any book which you do not own.* Any one, who will do such a thing as this, ceases, by the very act, to be a gentleman. In some instances, he ceases also to be an honest man; and, in still others, he deserves to be arrested and sent to the penitentiary.

CHAPTER XXIII.

LEARNING HOW AND WHERE TO FIND THINGS.

SECT. 430–432. Introduction.
433–436. Learning where to find things.
437–488. Learning how to find things.

§ 430. THERE is a great difference between learning a thing, and learning where to find it. Between the latter, also, and learning how to find the thing, there is a difference. It is impossible for any man to learn all the law; perhaps some men can learn where to find nearly all of it, though not quite all, for not all is recorded in any books; while every one, having a capacity for legal investigation, may learn how to find any particular thing in it. The most desirable attainment is to learn the particular matter of law; next, in desirableness, is to learn where to find it; and that which is least to be desired, yet necessary for every lawyer, is to know how it is to be ascertained.

§ 431. Though these three things appear, at the first sight, and in a certain view, to stand in the order thus stated as respects their desirableness; on a closer examination, and in another view, the order becomes reversed. Thus, since no one can learn more than a small part of the law, it would seem more important to know where the great body of legal truth is to be found written; and, since it is not all written, and

only a small portion of it can be actually appropriated by the memory, it would seem most important to have the power to ascertain the whole. And truly there is no acquirement so high, and none which will be practically so useful to its possessor after the acquisition becomes known to persons seeking legal help, as that by which he is enabled to find such parts of the law as are not written in any book, or even thought out by any previous understanding.

§ 432. Let us, therefore, seeing that the methods of learning the law have already been treated of in this volume, consider somewhat the other two heads in the following order: I. Learning where to find things; II. Learning how to find things.

I. *Learning where to find things.*

§ 433. There are some things which cannot and need not be accurately remembered, yet it is necessary always to know where they are to be found. Of this class are the statute laws of one's State and of the United States. These, being of a technical nature, cannot be carried accurately in the memory; nor need they, since the practitioner has always the statute books at hand, and it is never safe to give advice concerning any thing written, without looking at the writing at the time. A single clause, or even a word, may change the whole meaning; while exact verbal memory is neither possible with the majority of minds, nor in its nature very much to be desired by any.

§ 434. Therefore it should be a leading object, while one is reading the treatises, to discover and to

remember what particular topics are regulated by statutory provisions. Hence the recommendation, given in previous pages of this volume,[1] that the student, while perusing his treatise, should have the statutes lying before him to be consulted as side books. And in this connection may be examined questions relating to the interpretations which those statutes have received. It will not be amiss, therefore, when the student thus refers to the statutes, to examine at the same time the leading decisions of the courts, and the discussions of text-writers, upon questions of their interpretation.

§ 435. But, beyond this, the entire legal field should be mapped out in the student's mind, and he should know the names and the qualities of the books which treat of each particular part. This mapping out cannot be advantageously done in an instant; it, like the maps which students in geography draw from memory, is to be executed piece after piece, as the student progresses in his law reading. It can be done better and easier, in this way, than by attempting to execute the whole at once, and in advance. In this particular work, and in the general work of learning where to find things, he will derive great help from the lists of books and abbreviations with which the present volume closes, if he consults the lists according to the directions to be given by and by.

§ 436. If the student will bear in his mind, while he pursues his reading, the general matter of the

[1] Ante, § 389.

present sub-title and its importance, particular thoughts and methods relating to it will occur to him, more valuable than any which could be set down here. And always the student should remember, that his investigations and his plans ought to extend beyond the specific hints given in this book; and, in every respect, he who suffers books, of whatever kind, to circumscribe his mind, and set bounds to its accomplishments, acts the unwise part. As well were it, for him, if by him books were unknown.

II. *Learning how to find things.*

§ 437. This learning how to find things, relates both to those things which have been already ascertained and written down, and to those which have not. And —

First, *How to find the things which are written in the books.* — As the student reads, he should learn the meaning of the legal terms, and observe how the law writers divide their subjects. As to the legal terms, if he reads the books in the right order, he will find most of them defined by his authors, as he goes on. When he comes to a term not thus defined, he should look it out in a law dictionary. If he has not such a dictionary at hand, let him consult either Webster's or Worcester's unabridged Dictionary; for, in both these works, legal words are pretty well defined, though generally in brief.

§ 438. Then, with this knowledge of terms and the divisions of subjects, and with the knowledge of books and the general mapping out of the legal field recommended under the last sub-title, he will have a

good start on the road toward finding, in the books, the things for which he is seeking. Having the books before him, he may be aided by the following suggestions :—

§ 439. He will remember, in the outset, that what he is searching for is the law as it really is, and that a particular book may state it incorrectly. Therefore every case of doubt should be submitted to the double test of specific authority directly pertinent to the case, and of legal principle. In other words, the inquirer after the law should seek both for analogous decisions and for principles whereby the case may be decided.

§ 440. Let us suppose that he resorts first to the test of the more direct authority. There are advantages in this order; because, while he is searching for cases, he may be gathering the material from which to weave his texture of principles. If he does not know of decisions bearing on the point, he will go either to a digest or to a treatise for them. The best methods of looking will be obvious. If, in examining the treatise, he fails to alight upon the matter under any word in the index occurring to him, he will consult the author's order of arrangement, and travel along the text in the place where, according to this order, it ought to be. If the book has an analytical index, he will use that.

§ 441. Suppose he knows a case in point, and wishes to ascertain whether there are other cases. He takes his treatises and digests, looks for the case in the index to cases cited, turns to the place in the volume where it is mentioned, and there probably comes upon others, and other matter, on the same

point. This is an excellent method, we will here make a digression to say, when, in the course of an argument in court, one's adversary suddenly springs upon him an authority he was not prepared for. If he has at hand a good elementary treatise, which for this purpose is better than a digest, he may find, on turning to the place where the case is cited there, that it has been overruled, or limited in its application, or that it is borne down by the weight of other decisions having a different significance; or he may find suggestions concerning the law enabling him at once to dispose of the difficulty.

§ 442. This suggestion will remind the reader, that law books written, as some are, with references only to the volume and page of the reports, without giving the names of the cases, are in this respect very deficient in plan. The names of the cases should be printed, together with the volume and page of the reports; and the book, whether a treatise or a digest, should have a complete index to the cases cited. It is true that this index is not so much used as the others, and that the making of it costs great labor, and the printing of it is more expensive than of the other parts of the work. In like manner, the back part of a man's hand is less used than any of the rest, and perhaps it costs more to keep it warm; but, on the whole, a hand which had no back would not be a serviceable member.

§ 443. When this investigation of a matter on the specific authority is done, there still remains the same necessity for an investigation on principle; because, since no two cases are in all their facts precisely

alike, distinctions may be discovered between the facts which the investigator is considering and the facts on which the adjudication proceeded, not obvious until the principle is seen. Or the cases found may be wrong in themselves, and not sustained by other cases, so that the court will overrule them when the question next arises. Or the cases may have been already overruled. Or the point, notwithstanding the cases, may be a disputed one.

§ 444. But especially if the search for direct authorities was unsuccessful, the search for principles must be made. These principles, it should be remembered, do not severally belong to particular corresponding subjects, or branches of the law; but, like the warp to the woof in cloth, extend through all subjects.[1] For example, there may be found, in connection with the law of insurance, a principle which runs not only through this branch, but through that of bills and notes, agency, partnership, and many other branches, and governs a question arising on a libel for smuggling goods. So that, although under the head of smuggling there is no doctrine or decision either in digest or treatise to meet the exigency, yet, under other titles, may be found the principles which are to determine the case of smuggling. How a principle is to bear upon a case, in what form and order the one and the other are to be revolved in the mind of the investigator, and many other like practical matters, are better learned by experience and general study, than by any directions which, without

[1] See ante, § 228.

occupying too much space, can be given here. Yet, in the foregoing pages of this volume, there are various discussions shedding more or less light on the subject.

§ 445. In the examination of questions in this way, the student or practitioner must be careful to distinguish between what is authority in the absolute sense, and what is *quasi* authority. Various hints, and some careful expositions of the law, are given in the foregoing pages of the present volume, to aid the inquirer in this respect. It is noticeable, that, with us, most of the discussions found in our text-books, and the great body of the judicial decisions to which reference may be made, are only *quasi* authority. Of the decisions, this is true of all the modern English cases, and of all the cases adjudged in States other than the one in which the question arises.

§ 446. Moreover, reference may sometimes be advantageously made to what is hardly so much as *quasi* authority. Thus, to illustrate and explain the common law, the civil law may, in proper cases, be referred to; yet this is not with us authority, in any proper sense of the expression.[1] And, in the same way, we may refer to the Scotch law; and, in this system, where the common and civil laws are somewhat intermingled, blended also with local Scotch usages, we have often a quite convenient and helpful means of illustration, particularly when we resort to the extended Scotch Reports.

§ 447. The judges, in Scotland, follow the same

[1] Fable *v.* Brown, 2 Hill Ch. 378.

methods in pronouncing judgment as in England; they are able men, read in the civil law, the canon law, and the common law alike; and, giving reasons for their opinions, as they do, they often unfold a matter in such a way as to render their illustrations in a very high degree serviceable to common-law lawyers.

§ 448. Under all circumstances, when a good legal reason comes to us, from any source, we permit it, if we are wise, to do the work assigned by the Author of reason. And if it comes laden with the approval of half the judicial world, though it is the half to which we do not belong, still we receive it, giving it a respect proportioned to our veneration for its source. Hence, we see good ground for the weight sometimes allowed, in our courts, to the civil and foreign laws. But, since every legal system has its peculiarities of internal rule and construction, a proposition good in one may not be so in others, because not homogeneous to them. We do not, therefore, derive much profit from bare statements of points held in systems of laws with which we are unfamiliar; but, from comments giving reasons, and from full opinions pronounced by judges giving reasons, great help often comes. In this view, the Scotch reports, too little known in this country, are, as just observed, highly valuable. And though the English judges follow too much the spirit of the genuine Scotchman, who is prone to think more of himself than he ought, and so overlook the Scotch wisdom, as both the Scotch and the English do the American, no reason appears why we should follow the example of either.

§ 449. The discussions already given in this volume teach us, in a general way, to what other books we may go for legal light. We have mentioned "the treatises of the sages of the profession, whose works have an established reputation for correctness,"[1] together with the more modern treatises and commentaries. To these may be added the legislative acts of other countries governed by the common law, declaratory of what the law is;[2] and the dicta of eminent judges upon the bench, which, however, we have seen,[3] do not have the like weight of authority with the points decided.[4] Sometimes also we look to what may be deemed the general sense and understanding of the legal profession;[5] and especially to usages of the courts, though not sustained by any particular determination, for, as it is said in Coke's "Reports," "the course of a court is a law."[6] On an argument before one of the Circuit Courts of the United States it was held, that the opinion of a lawyer not in practice, given in a case other than the one before the court, may, in the discretion of the presiding judge, be quoted, not as authority in the technical sense, but as a means to assist the court in its researches and judgment.[7] This, it is believed, accords with a practice occasionally witnessed in the other courts. But, in these searchings, one is not confined to what may be properly read before a court; though, as a general

[1] Shaw, C. J., in Commonwealth *v.* Chapman, 13 Met. 68, 70; Chase, C. J., in The State *v.* Buchanan, 5 Har. & J. 317, 365; Commonwealth *v.* Churchill, 2 Met. 118.

[2] Bull *v.* Loveland, 10 Pick. 9, 13.

[3] Ante, § 164.

[4] Ram Leg. Judgm. 36 et seq.

[5] Ram Leg. Judgm. 12.

[6] Lane's Case, 2 Co. 16 *b*.

[7] Anonymous, 1 Wal. Jr. 107.

proposition, what will enlighten a practitioner in his office will equally enlighten a judge on the bench.

§ 450. Turning, again, to the reports of law cases, let us look a little further, though at the expense of some repetition,[1] at the sort of weight which is to be given to the respective decisions. Though neither the modern English decisions are authority in this country, nor are the adjudications in one State authority in another, yet these foreign cases adjudged by learned men in countries where the same general system of law prevails as here, are high evidence of what the law is. When cited in our courts, they are not only listened to with respect, but their conclusions are followed unless the judge sees some good reason for dissenting.[2] This course is wise and wholesome, promotive of enlightened views, and of harmony in the jurisprudence of the common law. Perhaps, in some States, the respect given to these foreign adjudications is not quite so great as this statement would seem to imply;[3] and, indeed, there can be no very exact rule on the subject. The legislature of Pennsylvania, either not appreciating the foregoing considerations, or fearful of foreign influence, early passed a statute prohibiting the citation, in the tribunals, of English cases bearing a date later than July 4, 1776.[4] "Yet," said Tilghman, C. J., "it was never so unwise or so illiberal as to wish to restrain the judges from deriving useful information from the opinions of learned for-

[1] See ante, § 161 et seq.

[2] Cumberland v. Codrington, 3 Johns. Ch. 229, 262; A. v. B., R. M. Charl. 228.

[3] Marks v. Morris, 4 Hen. & M. 463. [4] Du Ponceau Jurisd. 102.

eigners of all nations. *I have therefore had the curiosity to run through the English decisions on questions similar to that before us.*"[1] The provision exists also in one or two other States, but it is not likely to be further extended.

§ 451. There are reasons other than those usually addressed to courts of justice, why, in our sisterhood of States, respect be shown for the decisions of each other's tribunals. We are peculiarly one people; and, when we see one blood coursing through the common veins of our jurisprudence, we feel ourselves one. In practice, the judges of our older States sometimes look with too little favor on adjudications pronounced in the younger, — a weakness of the same kind which closes the English eyes to most of the light shining from American legal science.

§ 452. Looking, then, at the cases as authority and *quasi* authority, we come to a proposition already noticed,[2] — that a case in which the particular question was not raised, though involved in it, is of little weight.[3] And the same is true of an observation of the judge upon a point not in controversy.[4] Then we are to consider with what ability the opposite view to that taken by the court was argued by counsel; the character and standing of the court; and, above all, the force and propriety of its reasonings.[5] We must be sure, too, that we understand the

[1] Lewer *v.* Commonwealth, 15 S. & R. 93, 96.

[2] Ante, § 399, 400. [3] People *v.* Corning, 2 Comst. 9, 15.

[4] The Louisa Bertha, 14 Jur. 1007, 1 Eng. L. & Eq. 665, 669; Carroll *v.* Carroll, 16 How. U.S. 275.

[5] And see Ram Leg. Judgm. 17 et seq.

opinion of the judge, especially that we do not give to his general words too great latitude. This is a rock on which many split. His language is seldom, if ever, to be taken in a general sense, however general in the form of the expression, not mentioning exceptions or limitations. It should rather be understood as spoken in reference to the facts under consideration, and limited in meaning by those facts.[1] So there are various other similar things worthy to be observed in this connection; but the student will learn them as he proceeds in his studies.

§ 453. But it must be obvious to the reader, that, when we are considering law decisions which are only *quasi* authority with us, and really bind our tribunals only as they have respect for the court pronouncing them, or for the reasoning on which they are founded, we are not called upon to discriminate much between adjudication and dictum, or to determine whether they ought in future cases to be followed in their own locality. Let us, therefore, look a little more carefully than we have done in this volume, not at these foreign cases, but at our own; to determine whether or not, and in what circumstances, a court may properly be asked to overrule an express determination, made with due solemnity, by the same court, in a previous case.

§ 454. If the student will turn to the first volume of Kent's Commentaries, he will find there a pretty good exposition of the doctrine of *stare decisis*, as it

[1] Marshall, C. J., in Brooks *v.* Marbury, 11 Wheat. 78, 90, 91, and United States *v.* Burr, 2 Burr's Trial, 415, 4 Cranch, 470, 482, 488; ante, § 164, 210, 262, 393.

is called; in other words, the doctrine, that, when a principle of law is once settled by judicial decision, it cannot be overturned except by legislative act.[1] He may next turn to Ram on Legal Judgment, and there he will be presented with a large collection of judicial observations, and the like, relating to the same subject.[2] In like manner, he may find a statement of the doctrine, less extended in some respects and more in others, in the present author's work on Criminal Procedure.[3] Something, moreover, has been done on this subject in previous sections of the present volume.[4] Leaving these sources for the reader to examine at his leisure, it may be observed, that, in general, when the court of highest jurisdiction, having its mind fully enlightened upon each point involved, deliberately passes judgment in a cause before it; if the judicial understanding saw and weighed the matter, fully appreciating, not only the argument which was actually presented, but likewise all the argument which really exists; the decision, thus pronounced, is, as respects such law as is directly and necessarily involved in the case, and as is also affirmed by the court in the express terms employed in rendering the decision, binding as law in all future causes of the same kind.

§ 455. The proposition is, that the courts are, as a general rule, so bound. In the Commentaries on the Law of Criminal Procedure, the author had occasion to explain the doctrine, that, in certain extreme cases, not only such as are supposable, but such as have

[1] 1 Kent Com. 475–479. [2] Ram Leg. Judgm. 17 et seq.
[3] 1 Bishop Crim. Proced. § 1038–1047. [4] Ante, § 161 et seq.

actually occurred, it may be the duty of a court to overrule a wrong decision, though it should have been repeated any number of times.[1] If, for example, two persons were midway between Lakes Erie and Ontario, on the Niagara River, and it were agreed between them that one of them should transport certain goods for the other *up stream to the lake*, — not saying, in words, which lake, — and the party who was to do the work should take the goods to Lake Ontario, and then bring a suit to recover the price, alleging a fulfilment of the contract on his part; it would be quite possible a court might decide that the contract was fulfilled. The judge might say, that the words "up stream" mean, in a written instrument, down stream; and so, as the defendant has carried the goods down stream, he has done all he agreed to do. Or, he might announce the doctrine, that, in point of law, Niagara does flow from Lake Ontario to Lake Erie; though, in point of fact, its course is the other way; consequently, in point of law, the goods were carried "up stream," while in point of fact they were taken down stream. Surely it needs no argument to show, that, if this decision were repeated every day for a thousand years, it would not thereby become law; being contrary both to a fundamental principle of our language and to a law of nature. Equally plain is it, that a point like the one mentioned in the chapter before the last, where an allegation in an indictment was held to cover an enlarged form of offence described by a statutory provision, when by the established meaning of words it covered not so

[1] 1 Bishop Crim. Proced. § 1038 et seq.; ante, § 401 and note.

much as one hair's breadth of this enlarged matter, — could not become a part of our law, however many times it might be affirmed and re-affirmed by the judicial tribunals.[1]

§ 456. In these cases, the one real and the other supposed, there is something tangible, — palpable to the senses or to the understanding of every man, of a sort not to be controlled by, but itself controlling, judicial decision, — rendering it impossible the decision should be law. For, when a judge undertakes to reverse a law of nature, or to overturn a fundamental principle of the language, or to obliterate any axiomatic truth, he surpasses the judicial jurisdiction; and the decision, the dicta, the every thing connected therewith, is as inoperative to accomplish the result as is a Fourth-of-July oration to bend the poles of the planet Jupiter. The means has no relation to the end. The thing which the judicial power thus undertakes to handle is not palpable to its touch.

§ 457. On the other hand, when the thing which judicial decision attempts to do, is of a nature to be done by it, then the doctrine of *stare decisis* applies with greater or less force according to circumstances. Thus, for example, in the law of evidence, "where," says Professor Greenleaf, "the issue is upon the *life* or death of a person, once shown to have been living, the burden of proof lies upon the party who asserts the death. But after the lapse of seven years, without intelligence concerning the person, the presumption of life ceases, and the burden of proof is

[1] Ante, § 401 and note. And see ante, § 167.

devolved on the other party." Here, the presumption of death, after a lapse of seven years during which the individual is not heard from, is, as the reader sees, entirely artificial; for, by the testimony of our natural reason, we know that it is in fact just as probable the person is living after the seven years have elapsed as that he is dead. Still, if a hundred years have passed by, we are quite sure death has intervened. And it is the same if ninety-nine years have passed. Thus if we proceed, taking off a year at each experiment upon our understanding, we find no point at which we can state with any absolute certainty, that, at this exact point, and not at another, the person died. Yet, at the same time, we know, that, at some one of the points, death did take place. Consequently, it seems reasonable that there should be some technical rule established on the subject; and, if a judicial decision, or a series of such decisions, has woven into the law such a rule, there is nothing in the law of nature, in the fundamental law of our language, or in any axiomatic truth, whereby any one is authorized to say that the rule is necessarily wrong. In the present instance, "this period," continues Mr. Greenleaf, "was inserted, upon great deliberation, in the statute of bigamy, and the statute concerning leases for lives; and has since been adopted [by judicial decision], from analogy, in other cases."[1] And if, at a later time, some judge or some bench of judges should think the seven years too short or too long a period on which to found the presumption,

[1] 1 Greenl. Ev. § 41.

still they would not therefore be authorized to overturn the old law, which is a work to be rightfully done only by the legislative power.

§ 458. Now, it will be apparent to the reader, that there is a great diversity of things within the judicial jurisdiction, to which different considerations apply. We may say, of a particular decision, that it departs widely from the abstract doctrine, yet not in such a way as to render it impossible to stand, until overturned by legislative act, as the law of the land. Yet, if there is but the one decision, and the general current of the decided law and of natural reason is the other way, we shall not usually find it difficult to come to the conclusion, that, in point of duty, the judges ought to reverse it whenever the question comes before them a second time. Whether they actually will do this, we can only guess; or perhaps we may form something like an opinion if we know the men who will constitute the bench when the case comes up, and know how (in some instances it might also be important to know by whom) the question will be argued before them.

§ 459. If there are many decisions, wrong in themselves, the case stands quite differently. There, if the question is really within the judicial cognizance, a bench of judges will not usually feel authorized in overturning the old law. If there is but a single decision, and the bench now would have decided the case differently from what the bench did then, still, if no urgent reason presents itself, the one decision will be followed by the bench now, in the second case.

§ 460. This is about all which can be said on the present topic. The books are full of dicta and points upon it, but they do not enlighten us much. Thus, a point in one case is, that the doctrine of *stare decisis* leads the court to conform to a principle of mercantile law established all over the world, rather than follow a decision of the same court made a few years previously, if it is a very palpable and probably injudicious innovation upon that principle.[1] On the other hand, in another case it was laid down, that, where an erroneous principle has been established by decisions; and individuals, accepting it as settled law, have acquired rights under it; the court, after the lapse of many years, will hesitate long before overruling it; believing it better for the error to be corrected by the legislative than by the judicial power, "as all intervening rights would in that case be saved, and injustice be done to no one."[2] Again, the court will not overturn a well-considered decision upon the constitutionality of a law, where valuable rights and interests have become vested under it, although they may consider it to be erroneous.[3] Once more, when a decision involving the title to real estate (and the construction of a statute), has been solemnly announced by a court of last resort, and has become a rule of property, it will only be overruled for the most cogent reasons, and upon the strongest conviction of its incorrectness.[4] Of the like nature is a

[1] Aud *v.* Magruder, 10 Cal. 282.

[2] Emerson *v.* Atwater, 7 Mich. 12, 23.

[3] Fisher *v.* Horicon Iron &c. Company, 10 Wis. 351.

[4] Reichert *v.* McClure, 23 Ill. 516. And see Rogers *v.* Goodwin, 2

case in which the court refused to interfere with a rule regulating the title to property by descent, established by a decision six years previously; observing, "While we forbear to express any opinion as to the correctness of that decision, if the question were *res integra*, we are unwilling to unsettle titles which probably rest on its principles."[1]

§ 461. In a previous chapter, attention was called to the importance of approaching a matter of law in the right way, or by the right process, in order to produce the desired result.[2] If, therefore, one wishes to have the court reconsider a question which it has decided in his case, he should apply, while the case is open, for a rehearing; and he cannot make the application in any other form. Out of this doctrine has grown the rule of law, that a decision once made by the highest tribunal, in a particular case, becomes, even though it is wrong, the law for the guidance of the case through its subsequent stages.[3] This is a proposition not coming quite within the present subject; but it should be borne in mind in the present connection, in order to prevent misapprehensions liable to arise in the examination of the cases.

Mass. 475; Packard *v.* Richardson, 17 Mass. 122, 144; Opinion of the Justices, 3 Pick. 517.

[1] Bennett *v.* Bennett, 34 Ala. 53, 56.

[2] Ante, § 337, 338.

[3] Cole *v.* Clarke, 3 Wis. 323, 329; Rugely *v.* Robinson, 19 Ala. 404; Rector *v.* Danley, 14 Ark. 304; Thomas *v.* Doub, 1 Md. 252, 324; Thomas *v.* Albert, 15 Md. 268, 285; Stacy *v.* Vermont Central Railroad, 32 Vt. 551; Goodwin *v.* McGehee, 15 Ala. 232; Price *v.* Price, 23 Ala. 609; Stein *v.* Ashby, 30 Ala. 363; Pearson *v.* Darrington, 32 Ala. 227; Huffman *v.* The State, 30 Ala. 532; Pickens *v.* Oliver, 32 Ala. 626; Marshall's case, 5 Grat. 693.

§ 462. Secondly, *How to find the things which are not written in the books.* — The various discussions through which the reader has been already conducted in the present volume must have satisfied him, that, though the mass of our common law is, in some sense, written, there is more or less of it which has neither been written, nor even apprehended by any mind. It could not indeed have happened, that, seeing how vast are the complications of circumstances, and what immense volumes of new events are constantly coming into being in the onward movements, the agitations, and the developments of our human society, there should have been adjudged, in the past, either all the future actual cases, or all the principles of law which are to govern them. Those principles which define the boundaries of the judicial jurisdiction would naturally become, as in fact they have, pretty well drawn out; yet, even as respects them, there may be cases hereafter to arise in which it will be impossible to find any principle already brought to the cognizance of the courts, by which to determine that the particular case is, or is not, within the judicial jurisdiction. When such a case does arise, it must be decided one way or the other; for, since no judge can refuse to discharge the judicial functions, there is no means by which the responsibility of disposing of the case can be avoided, it being just as much a dereliction of duty to refuse action as to act.

§ 463. In the mass of cases, however, it will clearly appear either that the judicial power has jurisdiction over the question, or that it has not. Sup-

posing that in a particular instance it has, then the case must be decided on its legal merits, one way or the other. If there is no principle to be found in the books determining which way the question should be made by the judge to turn, still he must make it turn the one way or the other, just the same as though there was a principle. In the nature of things, there is no method by which he can avoid this responsibility.

§ 464. Therefore it is not possible for any case to arise within the proper jurisdiction of the tribunal without some law existing for its decision.[1] If the law is not to be found written in the books, still it exists, the same as though it were written there. If, even, it never occurred to any human understanding, this does not so much as constitute an argument showing its non-existence: it exists, just the same. But the question is one which is called a new question, or a new case. When the judges settle a new question, or case,[2] they do not make the law, but only determine what it was before; for, "in contemplation of law, all its rules and principles are deemed certain, although they have not, as yet, been recognized by public adjudications."[3] The decision then becomes evidence, it may be the only existing evidence, of what the law is and always has been on the question. Other cases occur, and they are in like manner decided, and so made evidence for the future upon the points involved in them.

[1] And see Broom Leg. Max. 2d ed. 146 et seq.

[2] As to new cases, see Ram Leg. Judgm. 150 et seq.

[3] 1 Story Eq. Jurisp. § 126.

§ 465. When no established principles or former adjudications exist to direct the judicial mind, the question necessarily is determined by what appears to be just and expedient in the particular instance, and harmonious with the general jurisprudence of the country. Now the human understanding is constituted to take cognizance of truth and justice by a sort of intuition; for, if it were not, men could not well be held accountable to a Supreme Power for all their actions, so sluggish are the processes of reasoning, and so constantly must their conduct be shaped upon the instant. Upright judges, therefore, when called to determine a question without the aid of precedents, will generally do it correctly.

§ 466. There are, as the reader has already seen,[1] principles of the law which have been in fact established by judicial decision, while yet they were not observed or recognized by the judges pronouncing the several decisions; neither, as yet, have they all been discovered and stated by text-writers: as, in nature, her principles, or laws, existed from the beginning, but only one by one has man discovered them, while, doubtless, there are still some undiscovered principles here, the same as there are in every system of the unwritten laws of man. It becomes, then, sometimes necessary for the practising lawyer, the same as it is always necessary for the writers of text-law, to make discoveries of legal principles, unknown and unrecognized hitherto, yet actually established already by judicial decision.

[1] Ante, § 179, 195, 230, 431.

§ 467. As the present volume is intended primarily for the instruction of students, it will be well to illustrate here, by an example, what has thus been stated concerning the necessity of discovering principles, already established by adjudication, yet unknown to the courts and to the text-writers, to be used in actual practice. To save the labor of looking up a case among the reports, the author will refer to one which occurred several years ago in his own practice, and is therefore familiar to him. It is the case of Mellen *v.* Whipple, reported in the first volume of Gray's Massachusetts Reports. The facts were, that Whipple had bought a piece of land subject to a mortgage; taking, as is customary in Massachusetts, a deed poll (which is deed in one part, signed only by the grantor); and, in the deed, the mortgage was mentioned, adding, "Which mortgage, with the note for which it was given, the said Whipple is to assume and cancel." By previous decisions, such a recitation in a deed creates a promise in law, from the grantee to his grantor, to take up the note and mortgage. But, in this case, Whipple having failed to pay the mortgage note, the holder of it, who had nothing to do with the original transaction, brought against him this suit. And the question was, whether there was any such privity between the parties[1] as would enable the plaintiff to maintain the action.

§ 468. The Massachusetts decisions, going further, perhaps, than the English, appeared, on the face of them, to contain the broad doctrine, without excep-

[1] Ante, § 18.

tion, that, in every case, if a promise is made to A, on any good consideration moving from A, to pay money to B, the latter can sue the promisor on this promise and recover. Of course, if this was really a rule to which there was no exception, there was no resisting the present demand. The counsel for the defendant found, that, by travelling out of Massachusetts, he could find a plenty of decisions denying the right of the third party to recover, and plenty of others in which the right was maintained. But none of the books, whether books of reports or text-books, contained any statement of an intelligent *principle* distinguishing the one class of cases from the other. At length, a principle did occur to the mind of the defendant's counsel, apparently reasonable and just in itself, reconciling most of the cases; and, while it tallied with the theory that all the previous Massachusetts cases, wherein such a plaintiff was permitted to recover, were correctly decided, brought the present case on the other side of the line. It was, as stated in the abstract of his argument given in the book of reports, as follows: "The principle on which a third person is permitted to recover, on a promise made by the defendant for his benefit, in cases where, like the present, no part of the consideration proceeded from him, is, *that there is some property or thing in the hands of the defendant*, which is the consideration of the promise, held by the defendant *as a trust, or a fund*, upon which the plaintiff has an equitable claim. Unless there is something to which such equitable claim can attach, he cannot recover, though the promise is made on some other good considera-

tion, as between the immediate parties to it." And he showed that, in the present case, there was no fund except the land; and, under the mortgage, the plaintiff had all this land by a claim prior to the deed under which the defendant afterward became the owner of the mere right to have it if he chose to take up the mortgage. Therefore there was absolutely no such fund.[1]

§ 469. The consequence was, that this view of the case carried the court, and prevented, what otherwise would quite likely have occurred, a decision in favor of the plaintiff. Said the learned judge who gave the opinion: "The defendant has no money which, in equity and good conscience, belongs to the plaintiff. No funds of Rollins's [Rollins having been Whipple's grantor], either in money, property, or credit, have been put into the defendant's hands for the purpose of meeting the plaintiff's claim on Rollins. The sale of the equity of redemption to the defendant did not lessen the plaintiff's security for the mortgage debt which Rollins owed; for that equity could not have been taken towards payment of that debt."[2]

§ 470. It is plain, that, in the law as in every thing else, the shadow walks beside the light, — the erroneous doctrine and the true keep step with each other. If, therefore, one announces what he claims to be a legal principle discovered by himself, the result does not necessarily follow that it is a true principle; for it may be a mere shadow, mistaken by

[1] Mellen *v.* Whipple, 1 Gray, 317, 319.

[2] Mellen *v.* Whipple, 1 Gray, 317, 323, 324, opinion by Metcalf, J.

the claimant of the discovery for the real light of the law. It is so in the department of discovery of the laws of nature. Many announcements of discovery here have been made, to be followed by the further discovery that the assumed law was a mere shadow, floating before the imagination of the discoverer.

§ 471. The great test by which to determine whether an assumed law of nature is really such, is to observe and see whether it reconciles all the facts to which the law, by its terms, applies. And, if we find facts contrary to the assumed law, we say that such law is a shadow, and not a reality. But, in our law of the land, we cannot proceed on quite so strict a rule. Nature never errs; yet judicial decision sometimes does err. A case may be wrongly decided; or, if decided correctly, it may be wrongly reported. A particular case, moreover, may have been overruled by a subsequent one. If, then, there is found in the books a single case or two contrary to a principle which one claims to have discovered, we do not necessarily conclude that the principle is a mere shadow, without substance, in the law. Still, as in nature, the discovered principle and the cases which were decided correctly must harmonize; and, if they do, — especially on the comparison of many cases with one another and with the principle, — we are generally safe in affirming that the principle is sound.

§ 472. There is, moreover, besides this comparison, a legal judgment, not quite definable in its nature, whereby a lawyer, well educated in his profession, and possessing a truly legal mind, is able to pass

with great accuracy on principles, even before they are thoroughly tested by comparison with the adjudications. This legal judgment, if it cannot be defined, can be described, by instituting comparisons between it and some other things. Thus, if one presents a literary work, which, he claims, is able to charm the masses of men who read books, there is no way by which the correctness of this claim can be absolutely tested, except by trial. Yet there are those, who, like physicians accustomed to feel the pulse of patients, until they can tell without the watch how fast the beat is, are constantly feeling the public pulse in such matters; and, if the literary work is of a common sort, such as has been tested over and over again, they can judge with great accuracy what its success will be. It is so, also, with judgments passed by experienced persons on productions in the fine arts. The practised judgment operates with great precision; and, in most instances, its operation is as quick as it is sure.

§ 473. When, however, the thing produced is out of the common course, there is no way but to test it by actual comparison and trial. Notoriously, this has always been so with literary works out of the beaten track in plan and execution; and it is the same with all other things of the sort. It is the same, therefore, in the law. Thus, on the breaking out of our late secession war, it became, as already observed,[1] the immediate duty of Congress, in obedience to the command of the Constitution, to pass laws establish-

[1] Ante, § 112, 113.

ing, in the seceded States, new State governments, recognizing the authority of the National Government, in the places of the old ones which had been overthrown by the various internal State revolutions. In doing this, Congress must provide who in those States should be the voters in the work of organizing such State governments; because, without a voting basis, there can be no votes cast, and voting is necessarily the first thing to be done in the work of establishing a new State government where the old one has been vacated. But as, in those States, the mass of the white people had refused to perform the work of voting for State officers to serve within the terms of the Constitution of the United States, and as the negroes had not refused but were willing, and as voters can only be men who vote voluntarily, it became the duty of Congress to authorize the negroes to vote, in connection with such few white men as were willing also. This was a plain legal result, which never was, never could be, and never will be confuted by any true legal argumentation proceeding from any competent and honest-minded legal person; yet, since the consequence of it would have been to abolish slavery, and since our people had always seen the Constitution of the United States operating to sustain slavery, — a difference which grew necessarily out of differences in those facts in the circumstances of the country upon which the Constitution, operating equally, wrought out diametrically opposite results, — even lawyers, declining to take into the account the changed circumstances, refused so much as to listen to such a proposition

when it was stated to them, though no lawyer was ever found to controvert it by juridical reasoning.[1] Therefore it follows, that it is not safe to reject a proposition of law, from whatever source it comes, simply because it does not accord with pre-conceived notions, or with public prejudices, or with supposed private interests.

§ 474. In the case just put, there was no discovery of any new principle, but an old principle, written in the supreme law of the land, was applied to new circumstances; yet, in all the country, there was scarcely a legal person who would look at the application, though no one who did look, was found to dissent on any basis of juridical reasoning. Hence we see, that, in searching for the law of a particular case, we are to look, in the first place, for such principles as may perhaps be seen on a close inspection and comparison to be applicable; and, in the second place, we are to observe how the principles control, if found applicable, the particular instance. It may be that there is need for the discovery of a principle, and then the operation of the principle in the particular case may be at once apparent. Or, on the other hand, the principle may be plainly laid down, yet the difficulty may arise in its application. Generally, whether the inquiry is directed to the work of ascertaining the principle, or to the work of applying a principle well known and recognized, the result, after it is wrought out, is entirely plain to every unprejudiced legal mind; though, in some classes of cases, where princi-

[1] And see ante, § 112, 113, 333–338; post, § 484, 485.

ple operates against principle, leaving it doubtful which of two conflicting principles should govern the particular case, the result may not seem so certain and clear on its bare enunciation.

§ 475. Next in importance to the possession of a strong legal mind, and good general legal acquirements, is the possession of a certain judicial balance of mind, and freedom from prejudices, as a qualification in him who is to look up a difficult or obscure question of law. The question stated in the section before the last could never have created embarrassments in any legal mind, had it not been for prejudices of party politics, of education, and of race. And it is the same with questions which arise in the every-day practice of the law. A client tells to a lawyer, aspiring for business, his story of real or imaginary wrongs; and the lawyer, ready and eager to avenge his wrongs, does not look at the legal questions involved precisely as does the impartial and cool-headed judge. Out of this fact grows a liability to err. And, in those States in which the judges are elected by the people for a term of years, so that at every step in their judicial career they are reminded of the next election, the same thing happens with them as with the lawyer aspiring for business. They cannot always decide well, if they would; such is the result flowing necessarily from a law of their human nature, under the circumstances, so different from those which surround the judge who has received his commission for life: just as, after an act of secession, null though it was as a means to effect the object intended, a different legal result came from the supreme law of the land, — drawn out,

from this same fountain, by force of the changed circumstances, — from what was before witnessed, or was possible. It does not therefore follow, from the well-known depreciation in the quality of the law proceeding from the supreme benches of those States in which a permanent judiciary has given place to a periodical elective one, that the recent judges are men greatly inferior to their predecessors; because, it is seen, there is another law which accounts for the falling off in the quality of the judicial productions. So it is likewise with regard to the judgments of lawyers upon legal questions which may become involved in party politics. Their prejudices, their passions, their supposed political interests, warp their understandings, and becloud their legal insight.

§ 476. There is a certain degree of versatility of talent necessary to constitute the consummate lawyer. When one is approached by a client asking for advice, he should be able to cast aside all private interests, both his own and those of his client, and sit upon the question as would an impartial judge. But, when this work is accomplished, and the case is made up for trial, then the true lawyer ceases to be impartial; he feels, he acts, he does every thing, in the place of his client, whose cause is his cause, and whose interests are his interests. Not indeed does he do what is dishonest or dishonorable, for such a thing the client ought not himself to do. But, beyond this, and within the proper and recognized limits, his interests and his client's being merged, he, like the client, ceases to be impartial.

§ 477. It is sometimes so difficult, yet always so

important, to decide correctly a question to which the books give no direct answer, that the author deems it best to continue this discussion a little further. Let us divide it into two parts; first, where the principle is to be discovered; and, secondly, where the application is to be discovered.

§ 478. 1. *Where the principle is to be discovered.* — Where the question is one of mere statutory law, there is sometimes required what is analogous to the discovery of a principle. Thus, an act of the legislature, plainly written in the statute book, may be void in part or in whole, as being repugnant to some constitutional provision, or even perhaps as being contrary to some elemental first principle in the unwritten law of right.[1] And it may be a nice question whether the act is so void or not. In like manner, a statute once in force may be repealed; and, in some circumstances, doubts arise whether a repeal has really taken place or not.

§ 479. Moreover, the original rolls, preserved in the Department of State, contain the statutes as enacted; and they are to be referred to when any doubt arises. But practically we look at the printed Statute Books, yet there may be a misprint; and, if in any instance there is reason to suspect the existence of misprint, the careful lawyer will cause the needful comparison to be made with the original.

§ 480. It will also be often a question what is the true meaning of the words of a statute. To settle a question of this sort, we refer to various rules

[1] Ante, § 88–91.

of statutory interpretation to be found interspersed through our law books. These rules coincide, more or less, with the rules which govern the interpretation of other writings; such as wills, deeds, and the like. There is a great deal of learning in the books on subjects of this sort, yet these subjects have not hitherto been treated by authors with as much skill as some others.

§ 481. How to ascertain the hitherto undiscovered principles of the common law we have perhaps sufficiently considered already. But it must be observed, with respect to the principles heretofore set down in the books, that they are often stated there with a greater or less degree of inaccuracy. The student and the lawyer must constantly exercise their minds in giving greater precision — and, indeed, greater *distinctness* — to the acknowledged principles which the books already contain. This is one of the most important points to which professional attention can be directed. Nothing contributes more to make of a man a great lawyer, than to draw in his mind the leading elemental principles of the law with a distinctness and accuracy of outline more fine and more exact than are common in the minds of the men of our profession. Each correction made, of the elemental statements found in our books, is itself a discovery of what is most valuable to the discoverer.

§ 482. 2. *Where the application is to be discovered.* — Under the title of statutory interpretation, our law books often discuss two dissimilar things; namely, the meaning of the statutory words, considered both singly and collectively; and the force of

the statutory provision in its actual operation in the great body of the law. But if the meaning of a particular provision is plain, still it may not be plain how it is to operate in the various circumstances which arise afterward; and this is a question quite disconnected from the other. The difficulty is, that, the statutory provision being a *legal principle*, added to a great mass of pre-existing legal principles,[1] principle may be found to conflict with principle, and it may not always be readily determined which of two conflicting ones is to give way in the particular instance. The student will find questions of this kind considered in the books which he will read hereafter; but a few hints here will be of assistance to him.

§ 483. All the principles of the law, statutory and common, must be considered as merged into one body of legal rule, and all must so operate together that each may live and perform its proper functions. This single consideration, applicable wherever the statute does not repeal the prior law, will furnish the key for unlocking half the difficulties which may arise on this subject.

§ 484. In the next place, the exact terms of the statute must be regarded. And so must those of a provision of constitutional law. Thus, for example, the Constitution of the United States contains the provision, that "the United States shall guarantee to every State in this Union a republican form of government."[2] It does not say that it shall guarantee a particular republican government, but the expression

[1] Ante, § 85.

[2] Ante, § 112, 473.

is general, "a republican form of government;" yet from Washington have issued from time to time various proclamations and state papers, to the effect, that, if certain State governments were formed in the seceded States, they would be accepted as entitling the States to the benefit of the constitutional *guaranty therefor*. But to extend thus the guaranty would be to invade the rights of the States; because, according to all precedent and all reason, the States have, when in their normal condition, the authority to change their governments as often as they choose, from one thing to another, so long as each new form of government is "republican,"—"*a* republican form of government,"—conforming to all the provisions of the United States' Constitution. *Want of thought*, it is to be supposed,—the same which was spoken of in a previous chapter,[1]— has induced the issuing of such inconsiderate state papers and proclamations. The constitutional guaranty is not a guaranty of a *particular* government for the State; but, in general terms, of "a republican form of government;" to be executed, therefore, both when the State ceases to have any government within the Union, and when its government has departed from the republican form prescribed in the Constitution and in sound reason.

§ 485. Another class of public men, who have not been in power in the nation, have made a like slip in the words in another way. Considering that the secession act was null, like an ordinary statute passed in violation of a constitutional provision, they have de-

[1] Ante, § 106–125.

nied all occasion for the execution of the "guaranty," and all jurisdiction of Congress over the subject. They have supposed that the State machinery merely stopped at the act of secession, and that it should be simply permitted to set itself in motion again (a thing, however, which the machinery has no power in itself to do), leaving all State laws to stand as they were at the date of the secession act. But there is no clause in the Constitution which uses such language as this; so the advocates of this doctrine do not find it there, but in their own imaginations. There are such things, spoken of in the National Constitution, and existing in fact, as State "governments;" and, when such a "government" ceases in any State, the guaranty clause says, "the United States" shall give the State a new "government," republican in form. When the old State government died, it retained no more power to bring life back to itself than does an old man when he dies. "The United States" is bound to provide for the State a new governmental life, — not to give the State new *laws*, but a new "government." And, since "the United States" acts by legislation, it must legislate for giving the State the new "government," not the new *laws*. But the first step toward providing such new government is, in the very nature of a popular government, to determine who, in the State, shall be the voters in the act of its organization. State laws here cannot be taken into the consideration; they are just as much out of the question as are the laws of France; because, according both to judicial determination and all legislative action, as well as by the express words of the Constitution, the United

States within the sphere of its constitutional action is quite independent of State laws and superior to them. "This Constitution, and *the laws of the United States which shall be made in pursuance thereof* . . . shall be the supreme law of the land, . . . any thing in the *constitution or laws of any State* to the contrary notwithstanding."[1] But suppose, as this class of politicians assert, the guaranty clause or some other does bind the United States to preserve to the States their State *laws;* on this supposition, by this interpretation, it strips them of independence, and leaves them nothing valuable not under the control of the General Government. It is the right of the States to change their State *laws* as often as they choose, — a right which such a construction takes away. *Laws* and "government" are two entirely different things. The United States may secure to the States "governments" of the choosing of their own people, without controlling their *laws* beyond the point necessary in the establishment of new governments, when the old ones vacate their functions or depart from the republican form. But want of attention to the words of the clause has led to the promulgation of doctrines, which, if carried out to their legitimate ends, would annihilate State liberty. True, as just said, when the United States has occasion to exercise its power under this constitutional guaranty, no State law can stand in its way: it is entitled to perform its constitutional functions according to the methods of its own choice; as, for instance, to prescribe who shall be the

[1] Const. U.S. art. 6.

voters in the act of forming the new State government. Indeed, it must prescribe this for the State; since, in the nature of a popular government, this is the first step in every movement for establishing any such government. This can no more be left till after the new government is established, than, in the creation of our earth, could the making of land and water be postponed to be produced from the earth after the earth was formed.[1]

§ 486. Now, it is safe for politicians to forget the words of a constitutional or statutory provision; for they argue mainly before the men of their own party; or, if they do not, the people whose votes they wish to secure seldom look for themselves. But lawyers, who are to be met by sharp antagonists, and who are to go before courts whose judges sit without political bias, must keep before them the exact words, or they will find themselves overthrown at the moment when they dream most sweetly of security. The public instances of oversight, rather than private ones, are mentioned in the present pages by way of illustrating and enforcing the general injunction to look and think; because, since they occur before the whole nation, the want in them of thought and of looking appears the more noticeable.

§ 487. When the legal investigator has placed before him the various principles which seem to stand around the question he is examining, whether they be principles of the written or the unwritten law, *and has ascertained their exact forms and terms*, he is then pre-

[1] And see ante, § 118.

pared to see whether this or that or what one must really govern his case. And here we come to the most numerous class of difficulties which beset the practical lawyer who is really well read in his profession. No statement here can help him much; his help must come mainly from his extensive reading, and the legal habit of mind which it will have given him.

§ 488. Still there is a practical common sense, which will generally guide the way through what thus appears to be a rugged road.

CHAPTER XXIV.

INCIDENTAL ACCOMPLISHMENTS.

§ 489. CONNECTED with every calling, there are some things which it is a reproach for him who pursues the calling not to understand, while the understanding of them does not imply any particular merit. Thus, in the law, every practitioner should be able to follow the general custom prevailing in his State, in the form of entitling the papers which he presents to the clerk of the court to be placed on the files. The style differs in the different States; it is not a matter of any consequence in itself, yet it looks well for the lawyer to present these his offspring dressed in the *fashion*. This sort of learning is acquired chiefly by observation, partly by oral instruction from the law preceptor.

§ 490. Again, when the lawyer appears before the highest tribunal, where a printed Brief, or Paper Book, or something of the kind, by whatever name it may be called in the particular State, is required, this should be done in conformity with the general style, and in good literary taste. It is not *legally* necessary to do more, for instance, in a brief, than merely to present the points in such language and dress that they can be understood. But every lawyer, who duly considers such a matter, will perceive that there is gold, as well as pleasure, in a good appearance on such an occasion.

§ 491. It is not easy to lay down such a rule as will teach us, under all circumstances, whether we ought to copy from the general custom, or whether we should walk in a different path of our own. But it is safe to say, that, in all things, if we can see no better way than the one in which the crowd goes, we should rush after the crowd. When the question is one of mere form, and involves nothing of either practical convenience or positive principle, and it is just as well one way as another, the wise man pursues the beaten track. And he seldom if ever departs from this track, unless there is a great and positive gain, clearly perceptible, to be derived from pursuing the new way. If there is, — if it is clear, certain, and absolute, — he generally throws custom to the winds, and treads where utility or duty leads. And a man who has sufficient capacity to be a lawyer can easily enough distinguish, in general, between these two classes of things. Plainly, the general form and outline of a plea or other paper to be filed in court, is, for example, a thing of the former class; while the substance is of the latter class. And this sort of distinction runs through all other legal things.

§ 492. The spelling of words is a thing belonging to a general literary education; and, where the authorities differ, each lawyer will follow the form which his general educational tastes prompt. There are, however, a few legal words, which no considerate lawyer would wish to see spelled, in his own productions, according to some of the forms given in the general dictionaries of the language. For example, the word *seisin* is sometimes found in these general dictionaries

spelled with a *z*; thus, *seizin*, and in this form it is not unfrequently printed in books, even law books. The corruption undoubtedly came from a misapprehension in the mind of some writer or printer, who supposed it was derived from the same root as the verb *to seize*. And when one spells it with a *z*, he exposes himself to the suspicion of not being acquainted with the legal origin and meaning of the word. Lord Coke says: "*Seisin*, or *seison*, is common as well to the English as to the French; and signifies, in the common law, possession; whereof *seisina*, a Latin word, is made, and *seisire*, a verb."[1] The word is used, in accurate legal language, only to indicate a particular kind of possession, not of personal property, but merely of real estate; such as came, in the early English law, by what was termed *livery of seisin*. Like other words, however, it has gradually become somewhat expanded in its meaning.[2]

§ 493. A man who becomes a lawyer does not thereby necessarily cease to be a scholar. As a scholar, he may have his particular opinions upon questions of orthography, and carry them out in the printing of his briefs and other productions of his pen. But most persons who write, and employ competent printers, let them follow their own rules in the general; because, if they do not, they will take upon themselves a great burden in superintending the press; since no type-setters or proof-readers can be kept to uniformity and exactness, except by watching them at each individual word, if compelled to depart from

[1] Co. Lit. 153 *a*. [2] And see 2 Bl. Com. 311–317.

their accustomed standards. And men whose business it is not to do this kind of work, usually find the labor very great, and their own slips very numerous, if they attempt it. No adequate benefit, therefore, it is generally supposed, would result from such labor; because, to most considerate men, the differences of spelling, among the standard styles, belong to the non-essentials.

§ 494. As a scholar, therefore, a man who is also a lawyer will spell as he chooses; or, if he is not particular about the standard, leave it in general to his printer. And, if he looks after the purely legal words, he will not subject himself to observation, whichever of these courses he pursues. Occasionally he may be attacked by a critic, who, like a reviewer in a recent legal publication, noticing a law work printed at a printing office in which the Websterian spelling appears to have been accepted as the standard, and preferring for himself Worcester's method, says: "We cannot pass without notice the insufferable practice of spelling 'counsellor' 'counselor.' It ill becomes a profession, styling itself learned, to countenance these new-fangled abominations, begotten on the ignorance of the laity [?] by the perverse eccentricities of a man [a lawyer] of talent."[1] But to most men things of this sort appear as thin as the letter *l* itself; and each lawyer is permitted to have, in peace, his own way about them.

§ 495. There are some other matters, pertaining to what may be termed the literary part of legal studies,

[1] 1 Am. Law Review, 371.

demanding greater attention than the foregoing. They are in part considered in previous chapters of the present volume, being deemed of the essentials. There remain for observation here the two following: First, The right naming of the law books cited; Secondly, The abbreviations used to express the names; Thirdly, Some other particulars connected with the methods of citation.

§ 496. First, *The Right Naming of the Law Books cited.* — The author has just taken from his shelf the first volume of a book in eight volumes, entitled, on the back, "Durnford and East's Reports." The full title runs, "Reports of Cases argued and determined in the Court of King's Bench, from," &c. Now, if he were to speak of a case in this book as being in Durnford and East's Reports, every one acquainted with such things would say, that he had called the book by the wrong name. It is known to the profession as the Term Reports; though, indeed, we occasionally see it cited under the name of its authors. But the words Term Reports appear nowhere on the title-page.

§ 497. Precisely how it came to be so named, in the language of lawyers, is not to the present author fully apparent. It was originally published in quarto, and it was followed by a series in octavo by Mr. East. The latter gentleman says in his "Advertisement" introducing to the profession his series: "In compliance with a desire very generally expressed by the profession, the Term Reports will in future be published in octavo. And as the author has been deprived of the assistance of his valuable and much

respected colleague, with whom his labors have been so long shared, he deems it proper to commence a *New Series*." One would suppose, therefore, that these reports by Mr. East were to be cited as the Term Reports, New Series; yet they never were so cited. Mr. East, in his volumes, cites Durnford and East's Reports as the Term Reports, and his own he cites as East's Reports. As such, therefore, the two series have been respectively known to the profession ever since.

§ 498. Taking down another set of Reports, bound in four octavo volumes, the author has presented to him the following: The four volumes are all lettered on the back "Croke's Reports," and are there numbered from one to four consecutively. But the paging of the first two volumes is connected, that of the second being run on in continuation of the first. In fact, these first two volumes were formerly published as one, when the work consisted of three volumes folio; but Mr. Leach, in editing the last and best edition, divided the first and largest volume into two. These Reports were, therefore, formerly referred to as the first, second, and third volumes of Croke's Reports. But the first volume was actually published last, and the last first; consequently, when in the book itself there is a reference to the first volume, it means the last volume, — that is, it is so in some of the older editions. In Mr. Leach's edition the references appear to conform to the present style. The reports in the first volume, considering the work to be in three volumes as formerly, cover the period of the reign of Queen Elizabeth; the second, of

James I.; the third, of Charles I. Therefore, to remove the ambiguity in the citations, and to distinguish this work from Keilway's Reports, which were edited by another Croke, and sometimes called Croke's Reports, these reports by George Croke were called after the names of the several reigns; thus, — Croke Elizabeth, Croke James, Croke Charles.[1] And so they should be spoken of and cited now.

§ 499. There are some other of the English law books which present anomalies like the foregoing. But most of them are known simply by the names of the author and subject, and there is no difficulty about what to call them. The anomalies will appear, with the rest, in the condensed review of books and abbreviations with which the present volume will be closed.

§ 500. In the United States there are some Reports whose true names, as known to the profession, do not plainly appear on the inspection of the volumes themselves. Thus, in South Carolina, there is a book in two volumes, entitled "Reports of Decisions of the Constitutional Court of the State of South Carolina," embracing the period from 1812 to 1816; and another in two volumes, entitled "Reports of Judicial Decisions in the Constitutional Court of South Carolina," covering the years 1817 and 1818. No reporter's name appears upon the title-page of either of these Reports, and, out of the State, they are severally known by all sorts of names. The former collection was *published* by W. R. H. Treadway, and

[1] See the several Prefaces; also, 1 Dyer, Pref.; Bridgman Leg. Bib. 88; Wallace Reporters, 3d ed. 148.

the latter by John Mill. If we look through the late volumes of the South Carolina Reports, we shall see that in them these reports without names are cited under the names of their respective publishers; thus, Treadway's Reports, Mill's Reports. Therefore they should be so cited elsewhere, — since every child should be called, abroad, by the name which it bears at home.

§ 501. The student can best learn the true names of the books by observing how they are mentioned and cited in the works which he reads. Yet sometimes he will find the wrong name given, if he is perusing a modern work; and, if his reading is of an ancient book, it may be that the style of designating the work cited has been changed since the book was written. To assist him, therefore, in every emergency, as well as to enable him to ascertain what books are meant by the various abbreviations which he will meet, and the dates, and something of the qualities of the books requiring special observation, the author will, in the closing part of this volume, present an alphabetical view of these things; more full, in some respects, than can be elsewhere found in any single collection. The use of this list will be found very convenient and beneficial, not only to mere students, but also to lawyers. If the information it gives is not so full on some points as the latter might desire, still it is compact, and it will sometimes serve as a welcome hint, pointing to the uses and means of a further investigation.

§ 502. Secondly, *The Abbreviations used to express the Names of the Books.* — It is a saving of

labor to the writers and printers, and of expense to the buyers of books, to abbreviate the names of the works cited. Especially where the citations are numerous, the gain in these respects is considerable. Hence, from the earliest times, abbreviations of this sort have been in use in our law books. Latterly some authors have adopted the style of printing out the names in full. But it does not seem to the writer that this is a judicious innovation; because, since abbreviations have already an established place in the old books, it being too much to expect that lawyers will burn their libraries and buy reprints for the sake of seeing the names in every citation spelled out in full, there is no reason why something like uniformity should not be preserved. In other words, every lawyer is obliged to learn the abbreviations, whatever may be his theory as to the propriety of their use; and, when they are learned, he finds the books in which they are employed to be just as convenient as the others, and he gets more for his money.

§ 503. The forms of the abbreviations differ somewhat in the different books. At first, when the number of law works was comparatively small, a very short abbreviation was sufficient. But, as books have multiplied, it has become necessary to extend in some instances the abbreviating forms. "No lawyer," says the author of the preface in the edition of Dyer's "Reports" published in 1794, "can be at a loss, when the initials of a book are given, to know what book is intended." But at the present time a reference so short would in many instances mean any one of several books.

§ 504. Since, then, the forms of abbreviation are not exactly alike in all law works, it may be well to bring before the reader some of the diversities here; and state some of the principles which should guide him in his choice between them, when, as occurs in the practice of every lawyer, he has occasion to use them. More particular information may be gathered from the alphabetical list of books and abbreviations at the end of the volume.

§ 505. The reader will notice, that, in some books, the name of Metcalf, a former reporter, is abbreviated thus, *Met.*, while in others it is *Metc.* Now, it is a good rule, in some cases, to let the letters in the abbreviation run on, to include the first letter of the second syllable of the name; because such letter is very suggestive of what is to follow. This rule would lead us to prefer the latter of the two forms above given. But the former is sufficiently plain; no one can doubt what it means. And it looks, written or printed, so much better than the latter that it is now almost universally preferred. Indeed, the latter of these forms is in very bad taste. A small, low letter, like the letter *c*, should not end an abbreviation, unless there is some special reason for it; and in particular it should not do so when the preceding letter is a tall one, like *t*. The reason is simply that it is not in good taste.

§ 506. The name of one of the North Carolina reporters is Iredell. In the reports of the State it is seen abbreviated in two ways, either *Ire.* or *Ired.* The latter of these forms, ending as it does with the long letter *d*, looks better than the former, ending

with *e*. But the former is not particularly out of taste, since the letter preceding the last is a short one, *r*, instead of a long one as in the instance mentioned in the last section. When the present author commenced his labors of authorship, he chose the latter form, *Ired.*; but, in actual practice, he found the printers continually failing to distinguish between this abbreviation and *Ind.* for Indiana; so he adopted the other form *Ire.*, which he has ever since employed. It is shorter, it looks well enough, it is just as plain as *Ired.*, and it is never mistaken for any thing else.

§ 507. At the end of every abbreviation, the reader knows, a period is placed in writing or in printing. Now, if an abbreviation of one name is itself another name, printers who are unacquainted with the abbreviation will be found constantly to omit the period. In like manner, the period may not be observed by the reader, and he may be in doubt whether what he sees is an abbreviation or a full name. Suppose Blackford, the name of an Indiana reporter, should be abbreviated *Black.*, nothing but the period would show that the name meant was not *Black*, a reporter of United States Supreme Court decisions. Blackford, therefore, should be abbreviated *Blackf.*, and it usually is so in our books. But, in Virginia, they have a former reporter named Randolph; and it has been always the style to abbreviate this name *Rand.*, though *Rand* is itself a name. If the abbreviation should be written *Rando.*, it would not look well, and there appears to be no way but to adhere to the custom in this particular instance. Still, if a reporter

should hereafter appear named Rand, much confusion would arise.

§ 508. The joint reporters of an English series are Maule and Selwyn. The joint name was therefore abbreviated in all law books *M. & S.* Afterward reporters named Moore and Scott appeared. Plainly *M. & S.*, having been employed to signify Maule and Selwyn, could not be taken up also to signify Moore and Scott. So the latter must stand *Mo. & S.*, or *Moore & S.*, or *M. & Scott.* In the first of these three forms we have only a substitution of a period for the three letters *ore*, and it seems scarcely necessary to cut so close for the sake of the small saving of labor and space. Of the other two, the author prefers the former, or middle one; because it seems plainer, as a general rule, where there are more names than one connected together, to be most specific in the first, since from this the mind receives a hint respecting the combined name. Yet this is not a rule of great consequence.

§ 509. But, seeing there are now reporters named Moore and Scott, should we still abbreviate Maule and Selwyn *M. & S.?* To the writer it seems better to change the latter to *Maule & S.;* yet, as *M. & S.* are quite familiarly known in the profession to signify Maule and Selwyn, he has not hitherto ventured upon this *innovation* in his books. A case somewhat like it occurs in the single name of Blackstone. In 1781, after the decease of Sir William Blackstone, the author of the "Commentaries," there were published, in pursuance of a direction in his will, two volumes of reports by him. These were cited as Blackstone's

"Reports"; the abbreviation being *Black.* or *Bl.* Then, a few years later, appeared Henry Blackstone's "Reports," also in two volumes. The latter were accordingly cited *H. Bl.* or *H. Black.* Consequently *Bl.*, used as the abbreviation of a reporter's name, means William Blackstone; and *H. Bl.* means Henry Blackstone. Yet more latterly it has become quite the custom to employ the form *W. Bl.* to signify William Blackstone. Changes of this sort are always to be encouraged.

§ 510. The last example conducts us into some questions, connected with the form of the citation, other than that of the mere abbreviation of the name. It may be observed, in general, that the abbreviation should be such as clearly to indicate the book meant; it should be in a form not obnoxious to good taste; it should be as short as it can be made consistently with perfect perspicuity; it should be such as is found practically convenient; and it should accord, as far as may be, with common usage.

§ 511. Thirdly, *Some other Particulars connected with the Methods of Citation.* — One rule, adopted by most writers, is, where a report is cited, to set down simply the abbreviated name of the reporter, without mentioning that the book is a book of reports. Thus, the citation Murray *v.* Kellogg, 9 Johns. 227, refers us to the case of "Murray and others," plaintiffs, against (*versus*) "Kellogg," reported in the ninth volume of Johnson's "Reports," commencing on the 227th page. But Johnson is a New York reporter; and, when he flourished, there was in this State a Court of Chancery, distinct from the common law courts, and he reported

for both tribunals. The foregoing citation refers us to the principal common-law series. If the chancery decisions were referred to, the reference would be written *Johns. Ch.* He also reported, in three volumes, an earlier series of common-law decisions, referred to as Johnson's Cases, and abbreviated *Johns. Ca.* or *Johns. Cas.*

§ 512. When, therefore, the name of an author alone is given, the reference points us to a Report or series of Reports of decisions rendered in the higher common-law tribunals, in distinction from equity cases, criminal cases, probate cases, and the like. Or, rather, it is so where there are reports, in distinct series, by the same author, of cases decided in the different tribunals. And when the reports are of a court not of common-law jurisdiction, there is added the abbreviation *Ch.*, if it is a court of chancery; or *Adm.*, if it is a court of admiralty; or *C. C.* if the reports are of circuit court cases; and so on, to signify the particular tribunal, or the particular name of the series. If there is but one reporter of the name, most writers simply set down the abbreviated form of the name, as already explained, though the report is of a court not of the ordinary common-law jurisdiction. The usage, however, is not uniform on this point; for some writers always add the designation of the court or the particular name of the report, when decisions other than of the usual superior common-law tribunals are meant. Indeed, some writers always add *R.* or *Rep.* to signify the word Reports; but this is clearly unnecessary, while it is not customary among those who are particular about things of the sort.

§ 513. If the book referred to is other than a book of reports, the short title of the book is indicated by the proper abbreviation placed after the abbreviated name of the author. Thus, *Bl. Com.* means Blackstone's Commentaries; *Hale P. C.* means Hale's Pleas of the Crown; *Co. Lit.* or *Co. Litt.* means Coke upon Littleton. Sometimes, when the author published no reports, and when he wrote but a single treatise, or but a single important one, his name only is given, without any addition signifying the particular book. A favorable illustration of this method occurs when Littleton's Tenures are referred to under the mere abbreviation *Lit.* or *Litt.* Still there is a Kentucky reporter with whose name this abbreviation might be confounded. And it is believed, on the whole, to be the safer and neater way to confine the citations by name alone to the reporters; and, in all other cases, to add to the name of the author the abbreviated name of the particular book. Where the work is a familiar one, and indeed in almost every instance, this particular abbreviation may be short. *Com.* for Commentaries, *Con.* for Contracts, *Conf. Laws* for Conflict of Laws, and the like, are sufficient.

§ 514. There are a few special books which are cited under special forms. One of these is the Year Books. This collection is generally referred to by the year of the king's reign, the initial of his name, and the page, and number of the placita. Prefixed to this is also sometimes the initial letter of the term of the court. Thus, *M.* 4 *H.* 7, 18, 10, means Michaelmas Term, 4th Henry VII., page 18, placita 10.

§ 515. Not every book is properly referred to by

page. The reference to some books should be to the section; but, in such a case, the number of the section should be preceded by the section mark. Thus, *Story Bailm.* § 105, means Story on Bailments, section 105. Sometimes the reference is most properly to chapter and section. An inspection of a book will generally show in what way the references in this respect should be given.

§ 516. In some of the old books, the references are made in forms so contracted as to create some real difficulty for the reader. There is no ready key to unlock all the difficulties of this sort; but the following passage, taken from one of the more modern prefaces to Dyer's "Reports," will be suggestive: "For the better understanding of the references, observe that some of the references to the Year Books and the Lord Coke's 'Reports' were contracted by the collectors with as much shortness as possible, and which may probably lead the reader into a mistake. For prevention whereof take an example or two: as, in fol. 5, pl. 1, in the margin there you find 19, 22 *H.* 6, 59, 28, and 6, 8, 10 Co. 8, 3, 38; which are thus meant; namely, 19 *H.* 6, 59; 22 *H.* 6, 28; 6 Co. 8; 8 Co. 3; 10 Co. 38. . . . A second example you have . . . where you find Co. 4, 125 *a*, 8, 42 *b*, 44; which must be thus understood; namely, Co. 4, 125 *a;* Co. 8, 42 *b*, 44. And, thirdly, in some places you will find a reference to a folio of my Lord Coke's 'Reports' without naming what part of his Reports. In that case 'tis always intended the first part of his Reports; and the like to any other author, where there are more parts than one of them."

§ 517. Some paragraphs from a work by the late Luther S. Cushing, entitled "An Introduction to the Study of the Roman Law," explaining the various methods of citing the principal books of the civil law, will close the present elucidations. He says: "The compilations executed by the orders of Justinian, namely, the Institutes, Digest, Code, and Novels, are most commonly embraced in one volume, and published under the name of the Corpus Juris Civilis; in which form they were first collected together, about the end of the twelfth, and first published under that title in the sixteenth, century. They have, however, been published separately, especially the institutes, which exist in a great variety of forms.

§ 518. "But in almost all the editions of the Corpus Juris Civilis, of which there is quite a number, we find, besides the works above enumerated, several other documents which are entirely foreign to the Roman law, and have nothing to do with the labors of Justinian. These are certain constitutions of divers of the eastern emperors: the *Canones Sanctorum;* the *Libri Feudorum:* certain constitutions of Frederic II. and Henry VII., emperors of Germany; the treaty of peace (*Liber de pace Constanciæ*) concluded between Frederic I. and certain confederated cities of Lombardy. These supplements were originally inserted in the Corpus Juris Civilis, on account of their convenience, in ancient times, in practice; they are of no use at the present day.

§ 519. "The institutes are divided into four books, each of which is divided into titles, which are severally subdivided into sections or paragraphs. The di-

gest is divided into fifty books, each book into titles, each title into laws (sometimes also called fragments), and many of the laws into sections or paragraphs. Books 30, 31, and 32, which treat of legacies and trusts, are not divided into several titles, but contain each of them a single title only, with the same rubric; namely, *de legatis et fideicommissis*. The code is divided into twelve books, each book into titles, each title into laws, and the laws frequently into paragraphs or sections, in the same manner with the digest. The novels, or new constitutions, are each numbered, and divided into chapters. The several books, titles, laws, and paragraphs, in each of the different parts of which the Corpus Juris Civilis is composed, are numbered consecutively. The titles only have a rubric.

§ 520. "There are, in general, two principal modes by which, in works of this description, we may indicate what passages we refer to; namely, by means of words, and by means of figures; using, for the first, the rubrics of the titles or the first words of the excerpts; and, for the last, the numbers denoting the book, title, law, and paragraph.

§ 521. "The first has the advantage, that it is not so difficult to recollect words as numbers; that, as the number must also be expressed, when the quotation is oral, the numerical order is not unfrequently longer and more compounded than other words, by which the passage may be known, as, for example, *lex vicesima octava*, the number of a particular law, is longer than *lex si contendat*, its initial words; that, in speech, or otherwise, when the book itself is at hand, other persons will more readily call to mind the pas-

sage referred to, if it is described to them by itself, that is, by its title or by its initial words, than by the mere indication, in numbers, of the place where it is to be found; and, lastly, that confusion is not so likely to occur from the use of words, as from that of several independent numbers indicating the book, title, law, and paragraph.

§ 522. "On the other hand, where references or citations are made in writing or printing, the numerical order of the different passages is manifestly the shortest; and it is also much easier to look for a text by its number than by its description or initial words.

§ 523. "It follows, consequently, that words are more proper for oral, and numbers for written or printed, citations; and also, that the former are more convenient for those who are familiarly acquainted with the book referred to, and the latter for those who are not so.

§ 524. "According to the first of these fundamental principles, the ancient jurists, whose works were used in the composition of the digest, referred to the writings of one another by means of numbers. The inscriptions of the laws or fragments excerpted in the digest are arranged, throughout, upon this mode of citation. In the novels, Justinian refers to his compilations according to the number of the books. Theophilus, in his paraphrase of the institutes, cites according to the number of the book and of the title. In the Basilica, the references are made in the same manner, with the addition of the number of the passage; and this is also the case with the later Greek jurists.

§ 525. "But in the time of Irnerius, and in that immediately succeeding, that is, during the period of the glossators, when the oral delivery of lectures came into vogue; when the custom of disputation prevailed, in which a principal part of the instruction, in regard both to the teacher and pupil, consisted; and when the advocates, in their oral conflicts at the bar, were accustomed to appeal to the authority of particular passages, — it became more natural, instead of citing the texts referred to by their number, to cite them by their initial words, or by the inscriptions or rubrics of the titles, with an indication of the compilation referred to.

§ 526. "To facilitate this mode of citation, some of the earlier editions of the Corpus Juris contain a table or register of the laws, arranged in alphabetical order, according to their initial words. The contrivance of the juridical playing-cards, by means of which the laws *quoad verba initialia*, might be learned by heart, is to be attributed to the same cause. This mode of citing prevailed among the glossators and other early writers on the Roman law, and some traces of it still remain.

§ 527. "While this method of citing was in use, it was not customary to add any number to the initial words, except when several other passages commenced with the same words; in which case the number of the passage beginning with the same words, and not the number of the passage generally, was added. Thus, for example, in the title *quod metus causa*, which is the second title of the fourth book of the digest, the third of the passages which begin with the

word *metum* is, in connection with the other laws of this title, the ninth. Hence, it was for a long time cited as the *lex metum*, 3, *D. quod metus causa.* Afterwards, it was cited as the *lex metum* 3. Finally, the initial words were dispensed with altogether, and the passage was cited merely as *lex* 3. So the laws 1, 58, 63, 67, of the third title of the third book of the digest, *de procuratoribus et defensoribus*, begin by the same word, *procurator.* The law 63 was consequently cited as *l. procurator* 3, *ff, de procuratorib.*, because it is the third of the same title which begins with the word *procurator.*

§ 528. "The invention of printing, which, in general, gave to instruction out of books a great preponderance over the oral method by lectures; which, also, made a more frequent revision and correction of the numbers possible, and consequently secured a much greater degree of accuracy in the use of them; and which, besides, very much enlarged the reading and knowledge of the jurists, hitherto confined within the limited circle of juridical books, made the method of citing by numbers more appropriate and necessary, as well as less liable to mistake, than before.

§ 529. "The use of printing, however, was not followed at once by the substitution of numbers for initial words in citing. Instead of this, the custom grew up by degrees, especially in Germany, of adding the number to the initial words, which, as already remarked, had only been practised when several other passages commenced with the same words.

§ 530. "At length, the old method of citing appears to have been superseded to a great extent, if not

entirely, by a combination of words and figures; the former (preceded by the initial letter of the compilation referred to) to denote the title, in which the passage cited occurs, and the latter the number which it bears in that title. This system, which is adopted by the authorst o whose works we have most frequent occasion to resort, among others by Domat and Pothier, requires to be explained at some length.

§ 531. "The digest is denoted by the letter *D.* or the sign *ff;* the institutes, by the letter *I.*, or the abbreviation *Inst.;* the code, by the letter *C.*, or *Cod.;* the novels, by the letter *N.*, or *Nov.* The letter *L.*, or *l.*, is used to designate a law, both in the code as well as the digest; the sign §, a paragraph or section of a law of the code or digest, or of a title of the institutes.

§ 532. "The general plan of reference to the institutes, digest, and code, is by the rubric of the title, or, where the rubric is long, by the first two or three words of it, with the number of the law, and also of the paragraph where the law cited is thus divided. The words of the title are usually abbreviated.

§ 533. "Where several titles of the part cited have the same first word or words, we use several of these words, until we come to where the two titles begin to differ. If we wish, for example, to cite the title of the digest, *de his qui effuderint vel dejecerint*, and the title *de his qui notantur infamia*, we say, for the first, *D. de his qui effuder.*, and for the second, *D. de his qui notant.*

§ 534. "When a citation refers to one of the titles which are most used, the initial letters only, put in

capitals, are employed. This is the case with the following, among other titles; namely, *de verborum significatione*, *de regulis juris*, *de verborum obligationibus*, *de obligationibus et actionibus*, *de justitia et jure*, which are designated, the first by *V. S.*, the second by *R. J.*, the third by *V. O.*, the fourth by *O. et A.*, and the fifth by *J. et J.* Thus, *l.* 2, *D. R. J.* designates the second law in the title of the digest, *de regulis juris*.

§ 535. "With these remarks the mode of reference will best be farther explained by examples: —

"*L.* 2, *D. de fidej. et mand.* — This reference denotes the second law of the title of the digest *de fide jussoribus et mandatoribus*, which will be found, by reference [to the book itself, or a table of titles], to be the first title of the forty-sixth book.

"*L.* 29, § 6, *D. mand.* — This refers to the sixth section or paragraph of the twenty-ninth law of the title of the digest *mandati vel contra*, which is the first title of the seventeenth book.

"*L.* 10, § *ult. D. mand.* — The last paragraph of the tenth law of the same title of the digest.

"*L.* 1, *C. de fidej. min.* — The first law of the title of the code *de fide jussoribus minorum*, which is the twenty-fourth title of the second book.

"§ 1, *Inst. de duob. reis.* — Institutes, the first paragraph of the title *de duobus reis stipulandi et promittendi*, which is the sixteenth title of the third book.

"*L. pen. C. de non num. pec.* — The last law but one of the title of the code *de non numerata pecunia*, which is the thirtieth title of the fourth book.

§ 536. "The abbreviation *eod.* denotes the title

given in the reference next immediately preceding: thus, *L.* 9, § *ult. eod.* immediately following the reference *L.* 20, § 2, *D. de pign. act.*, denotes the last paragraph of the ninth law of the title of the digest *de pignoratitia actione vel contra*, which is the seventh title of the thirteenth book.

§ 537. "If the last reference be to a different part of the Corpus Juris Civilis from the first, the part referred to is designated by the proper letter or abbreviation: thus, *L. ult. Cod. eod.*, following immediately after *L.* 4, *D. in quib. caus. pign. vel hyp. tac. contr.*, which is the second title of the twentieth book of the digest, denotes the last law of the code contained in the title bearing the same rubric with the title of the digest referred to; namely, the fifteenth title of the eighth book, *in quibus causis pignus vel hypotheca tacite contrahitur.*

§ 538. "The words *in fine*, or the abbreviations *in fin.*, *in f.*, denote that the particular passage referred to is *at the end* of the law or paragraph thus designated.

§ 539. "The letters *D. l.* denote the *said law*, that is, the law designated by the reference next immediately preceding. *D. ll.* are used when more than one law is referred to. *D. t.*, the *said title*. *D.* §, the *said section* or *paragraph*.

§ 540. "Some of the titles contain but a single law. When this is the case, the reference is in this form: *L. un.* (*unica*) *C. ut caus. post pubert. ads. tut.*, or the only law in the title of the code *ut causæ post pubertatem adsit tutor*, which is the forty-eighth title of the fifth book.

§ 541. "The words *in principio*, or the abbreviations *in pr.*, denote the *beginning* of the law, or of the other particular part referred to. Where a law is divided into several paragraphs, the first is not numbered, and is referred to in this manner. Thus, by *L.* 1, *in prin. D. de calumniat.*, is meant the paragraph at the beginning of the first law of the title of the digest *de calumniatoribus*, which is the sixth title of the third book. *L.* 71, *in f. princ. D. de fidej. et mand.* At the end of the paragraph commencing the law seventy-first, &c.

§ 542. "The letter *V.*, as *V. l.* 1, § 3, &c. (that is, *see* the passage referred to), indicates that the law designated is referred to, not as directly, but only by analogy, or indirectly, supporting the principle or proposition to which it is cited.

§ 543. "The same thing, nearly, is indicated by the sign *arg.*, as, for example, *arg. l.* 35, *quod sœpe*, &c., by which it is signified, that the writer argues from the law thus referred to in favor of his proposition.

§ 544. "*L. un.* (*unica*) § 7, *versic.* (*versiculus*) *sin autem, cod. de rei ux. act.* This refers to the seventh paragraph of the only law of the code, book fifth, title thirteen, *de rei uxoriæ actione*, &c., at the sentence commencing with the words *sin autem.*

§ 545. "The three books, 30, 31 and 32 of the digest, which treat of legacies and trusts, and each of which contains but a single title, with the same rubric, *de legatis et fideicommissis*, are referred to as *de legat.* 1, *de legat.* 2, *de legat.* 3. Thus, *L.* 37, § 5, *D. de legat.* 3, denotes the digest, book thirty-second, law 37, § 5.

§ 546. "Sometimes a text is referred to both by its initial words and by its number, as, for example, *l. quod sæpe*, 35, § *in his* 5, *D. contrah. emt.*, by which is designated the fifth paragraph or section of the thirty-fifth law of the first title of the eighteenth book of the digest.

§ 547. "The jurists, whose writings were excerpted in the digest, were at the same time authorized expounders of law, advisers in legislation, and writers of law treatises. Before this time, these writings were included under the term *jus*. When inserted in the digest, they became *lex;* that is, the whole mass of excerpts contained in the digest, by receiving the emperor's confirmation, became a work of legislation. Hence it has been usual to call the several passages excerpted, *leges*. But, though the whole compilation obtained the force of law, the term laws is not strictly applicable to the several excerpts, taken individually.

§ 548. "It is clearly improper, as Hugo observes, to call the second excerpt in the ninth title of the forty-seventh book of the digest, which consists merely of the words *et loco*, a law; or to give that appellation to the historical fact, *Partus pignoratæ ancillæ in pari causa esse, qua mater est, olim placuit*, which constitutes the whole of the first excerpt in the twenty-fifth title of the eighth book of the code.

§ 549. "For this reason, and also because these individual excerpts, of which the digest is composed, are, in reality, nothing but extracts of fragments taken from the private law writers before the time of Justinian, they are sometimes cited, particularly by the

modern German writers as *fragments* (designated by the abbreviation *fr.*), either with or without the author's name. Thus, the sixteenth excerpt, in the second title of the thirty-third book of the digest, is taken from the responses of Modestinus, one of the writers, whose works were used in the compilation of the digest, and is entitled *Modestinus, libro* IX. *Responsorum.* This text is referred to, in the manner above indicated, as *Modest. fr.* 16, *de usu, et usufr.*

§ 550. "But the passages in the code are not fragments, and many of them at least have never been any larger than they now are. The word *fragment*, therefore, is no more appropriate than the word law, to designate them. A better term than either is the word *constitutio* (abbreviated *c.*, *co.*, or *const.*), which is sometimes used. 'But,' as is remarked by Berriat-Saint-Prix, though 'the term *law* is certainly not the most proper to designate these texts, it has been in some sort legitimated, for several centuries, by the usage of all the authors, even those of the first rank.'

§ 551. "The ancient writers, as well as the more modern authors, cite the *novels* by the first words of the rubric, frequently with the addition of the number of the collation, as well as the title and chapter. Thus, where they referred to the third chapter of novel 118, relative to collateral succession, they wrote *Auth.* (the novels are also denominated *authentics*) *de heredib. ab intest. c.* 3, *collat.* 9, *tit.* 1. But this is a somewhat uncertain designation. There are many editions of the Corpus Juris, which have no one hundred and eighteenth novel; and there are many, also, in which

the one hundred and eighteenth does not relate to the subject of succession. The novels are now commonly referred to by their numbers, which are not the same in the older editions, and the number of the chapter.

§ 552. "The *authentics of the code* are cited only by their first words, preceded by the sign *Auth.* and followed by an indication of the title and law of the code in which they are inserted, as follows: *Auth. si qua mulier, C, ad S. C. Velleianum.* This reference denotes the authentic appended to the twenty-second law of the twenty-ninth title of the fourth book of the code.

§ 553. "A third mode of citing, which is the most common at the present day, consists in the use of numbers only. It appears to have been first introduced by Ayliffe, an English author, who published, in 1734, the first volume of *A new Pandect of Roman Civil Law*, with a preliminary discourse touching the rise and progress of the civil law. In this work, he merely mentions in what part of the Corpus Juris the passage referred to is, and then gives the numbers which describe its locality, as, for example, *D.* 1, 2, 2, 5. The letter indicates the digest. The first number indicates the book, the second the title, the third the excerpt, and the fourth the paragraph. This method has been substantially followed by Gibbon, in his history, with the addition of abbreviations indicating the book and title to which the numbers respectively belong.

§ 554. "One of the advantages of this mode of citing, besides its greater facility, is, that it enables us

to avoid confounding the digest and code, which, at least, in regard to the inscriptions that are common to both, often proves a source of confusion. When the number of the book cited exceeds 12, it is not in the code; and when the number of the title cited, in any one of the first twelve books, exceeds 22, or 15, in the first two books, or only exceeds 9 in any of the ten following, it does not belong to the pandects. In about 1200 titles, there are probably 100 in which it is as possible that the book and title of the pandects are meant, as the book and title of the code; but, in all the others, and, consequently, in the proportion of 11 to 1, it is certain, that, according to the number, the title referred to is in the code alone, or in the pandects alone; for example, if the reference be 1, 5, or 2, 10, or 3, 4, &c., the work (namely, the code or pandects) ought also to be mentioned; but, on the contrary, if it be 13, 1, or 20, 1, the work must necessarily be the pandects; or, if the reference be 1, 30, or 6, 60, it must be the code.

§ 555. "There are other modes of citation, which have been adopted and used by particular authors. They may all be readily resolved into the elements which are enumerated as constituting the three modes of citing above described, and do not require any distinct explanation."[1]

§ 556. Thus the author has completed the view of the law and law studies which he proposed for the present work. In the pages which now follow, the student and the practitioner will find a convenient and

[1] Cushing Study Rom. Law, par. 280–319.

much needed helper. Some difficulties attended the arranging of the matter in alphabetical order, growing out of its peculiar nature; therefore, if the inquirer should fail to find the word or letters sought, in the place where it is supposed they should stand, let him look elsewhere; because different persons would arrange such a table somewhat differently.

CHAPTER XXV.

ALPHABETICAL LIST OF NAMES AND ABBREVIATIONS, WITH DATES, AND SOME OBSERVATIONS RESPECTING THE QUALITIES OF PARTICULAR BOOKS.

§ 557. THE list of books, abbreviations, and the like, with which this chapter is occupied will be useful to students and to practitioners in more ways than it is necessary here to mention. It will be specially convenient, as enabling readers of law books, to determine nearly the date of any case cited, and the dates of the authorities generally. It will help the student to become familiar with the names of books, and with their abbreviations. It will suggest many things respecting the reliability of particular authorities; and it will enable all who speak or write on legal subjects to give the correct names to the books cited or mentioned, and use approved forms of abbreviations.

§ 558. The asterisk (*), prefixed to a name or abbreviation, denotes that it ought never to be used. The dagger (†) indicates that the particular form is not so good as some other one. Those forms which the present author does not employ are enclosed in parentheses. To some of these there are no very decisive objections; while others are objectionable, yet not sufficiently so to receive the mark of the dagger.

§ 559. Each letter of the alphabet, after it has been gone through with, leading *names*, is repeated, leading some abbreviations which could not be made well to appear in the former collection, or which might probably be overlooked there; but most of the abbreviations sufficiently appear in the former, or principal, collection. Some of the current treatises, which are constantly passing into new editions, English or American, or both, or which are independent of date, are simply marked *Con.* (for Contemporaneous), and no date of any particular edition is given. Other peculiarities of arrangement will appear on inspection of the list itself.

§ 560. A. — Principal Collection.

Abbott's Admiralty Reports; *Abbott Adm.* (or *Ab. Adm.*); U.S. South. Dist. N.Y.; 1 vol.; 1847–1850.

Abbott's Practice Reports; *Abbott Pr.* (or *Ab. Pr.*); N.Y.; 1854 to present time.

Abbott on Shipping; *Abbott Ship.* (or *Ab. Sh.*); 1 vol.; Eng. and Am. notes. Con.

† Abridgment of Equity Cases; † *Abr. Cas. Eq.* See *Equity Cases Abridged.*

Acton's Reports; *Acton* (or *Act.*); Eng. Prize Causes; 2 vols; 1809, 1810.

Acts of Parliament. See *Statutes.*

* Adams's Reports. Same as 41 and 42 *Maine.*

* Adams's Reports. Same as 1 *N.H.*

Adams's Doctrine of Equity; *Adams Eq.;* Eng. and Am. notes. Con.

Adams on Ejectment; *Adams Eject.;* 1 vol.; Eng. and Am. notes. Con.

Addam's Ecclesiastical Reports; *Add. Ec.;* Eng.; 3 vols.; 1822–1826.

Addison's Reports; *Addison* (or *Addis.*); Pa.; 1 vol; 1791–1799.

Addison on Contracts; *Addison Con.* (or *Ad. Con.*); Eng. and Am. notes. Con.

Addison on Torts; *Addison Torts* (or *Ad. Torts*); 1st Eng. ed. 1860.

Adolphus & Ellis's Reports; *A. & E.;* Eng. K. B.; 12 vols.; 1834–1841.

* Adolphus & Ellis's Reports, New Series. Same as *Queen's Bench.*

Aikens's Reports; *Aikens* (or *Aik.*); Vt.; 2 vols.; 1825–1828.
Alabama Reports; *Ala.;* Ala.; 1840 to the present time.[1]
Alcock & Napier's Reports; *Alcock & N.* (or *Al. & N.*); Irish, K. B. & Ex. Ch.; 1 vol.; 1831–1833.

[1] These reports are sometimes cited *Ala.* N.S., though the proper citation is simply *Ala.* The erroneous method springs from the fact, that, "Minor's Reports" having been lettered on the back "Alabama Reports," while still they appear always to have been cited by the name of the reporter, this series, when it was commenced, was called "Alabama Reports, *New Series*," both upon the title-page and in the binder's lettering. The words "New Series" have since been dropped from the title-page, but we occasionally see them put upon the back by the binder. The names of the reporters of this series, — which, however, should never be cited by their names, — are the following: vols. 1–11, the Judges of the Court; vols. 12–15, J. J. Ormond; vols. 16–18, N. W. Gocke; vols. 19–21, J. W. Shepherd; vols. 22, 23, the Judges; vols. 24–38, J. W. Shepherd. Now, as I am about to pass this matter to the printers to be put in type, there come to me the two volumes which are lettered on the back "Bouvier's Law Dictionary, revised and enlarged edition," dated on the title-page 1868. Turning to the article "Reports," I find a list introduced by the editor, who first states the name and several titles, honorary and otherwise, of the author, as follows: "It is, without doubt, the most learned, full, and exact list which has ever been prepared, either in England or the United States, — the result of immense labor, and of most accurate knowledge and research. As such, it deserves the highest praise, and, we are sure, will be properly valued by all American lawyers." Whether this particular encomium is just or not, I wish here to caution the young reader, as I did when I cautioned him against relying upon reviewers' puffs (ante, § 250 et seq.), that, when a law-book is written upon the rather unusual plan of employing numerous authors with one general editor to extol their several performances, what is thus said in their commendation should not be accepted as absolute truth into which it is impossible for error to enter. Returning, then, to the present instance, we notice that the author of the list sets down the "Alabama Reports" as being in 18 volumes, extending from 1820 to 1839, — vol. 1 by Minor, vols. 2–4 by Stewart, 5–9 by Stewart and Porter, and 10–18 by Porter. The rest, called by me, as above, "Alabama Reports," he tells us are "Alabama, New Series." I make this particular statement for the benefit of readers who wish to hear "both sides" of a question before they decide. Until this Dictionary in the present edition came to hand, I never saw, in any book, a reference to the reports of Stewart, of Stewart and Porter, or of Porter, under the name Alabama Reports, or the abbreviation *Ala.;* though, for all this, it is possible such references do exist in some of our books. And, to be sure that I do not mislead my readers, I have just turned afresh to the reports themselves of this State. In every instance which a considerable time spent in searching brought to my notice, I have found that the abbreviation *Ala.* directed me to a report of the series which commenced in 1840; and, in every instance, where a report of a previous date was referred to, the reference was made by giving the name of the reporter, or an abbreviation of the name. But the reader will do best to examine the matter for himself, and then decide. It is with me a rule, to which it is very rare that I allow an exception, not to criticise in my law writings, and especially not to point out errors in, the works of contemporaneous authors. If I state any matter in a way contrary to that in which it is laid down by any contemporaneous writer, I trust to the candor of my readers to give me credit for having done so purposely,

Aleyn's Select Cases; *Aleyn* (or * *Al.*); Eng. K. B.; 1 vol.; 1646–1649.[1]

Alison on the Criminal Law; *Alison Crim. Law;* 1 vol.; 1832; a Scotch work.

Alison on Criminal Practice; *Alison Crim. Pract.;* 1 vol. 1833; a Scotch work.

Allen's Reports; *Allen;* Mass.; 1861–1867.

Allen's Reports; *Allen, N. B.;* N. B.; 1 vol. 1848–1850.

Ambler's Reports; *Amb.*; Eng. Ch. &c.; 1 vol.; 1737–1784.[2]

† American Criminal Law; † *Am. Crim. Law.* See *Wharton.*

American Jurist; *Am. Jur.;* a law quarterly, Boston; 28 vols.; 1829–1842.

American Law Register; *Am. Law Reg.;* a law monthly, Philadelphia; 1852 et seq. Con.[3]

American Law Review; *Am. Law Rev.;* a law quarterly, Boston; 1866 et seq. Con.

† American Leading Cases; † *Am. L. Cas.* See *Hare & Wallace.*

† American Railway Cases; † *Am. R. Cas.* See *Smith & Bates.*

* Ames's Reports. Same as *R.I.* vols. 4–7.

and to their discretion to pronounce wisely between the two statements. When there are law *authorities*, known to me, contrary to any position I lay down, I always make reference to them. The reason for the departure, in the present instance, from my ordinary rule, is, that I wish to give the young reader a caution, general and special: — general, to accept nothing, from any author, merely because of his position, or because somebody praises his work; special, to avoid, in particular, being misled by this Dictionary article, so ostentatiously introduced. A single glance at it shows that its errors, in the respect now under consideration, are so numerous as to render it nearly worthless as a guide to the method in which the reports should be cited.

[1] This volume has the reputation of being one of the most unreliable of the old posthumous collections of reports, to which disreputable class it belongs. It is a book of very little value. See Wallace Reporters, 3d. ed., 202.

[2] This volume of reports is by a chancery lawyer, and contains his collections for a period of forty years, of which, he says, "thirty were employed in the court of chancery, under five lord-chancellors, three sets of commissioners, and five masters of the rolls." Pref. p. iv. It was first published by the author himself. The cases are reported very briefly, — too briefly to be altogether satisfactory. See ante, § 154. Therefore it has been said that "Ambler, as originally printed, was of imperfect authority." Every legal exposition must be imperfect, which is too succinct. "A new and much improved edition was given to the profession, in 1828, by Mr. Blunt. Prior to this edition, there was a folio, London, 1790, and an 8vo., Dublin, same year." Wallace Reporters, 3d ed. 322. Mr. Blunt's edition is valuable, as containing, among other things, "corrections from the registrar's books," &c. It is printed in two volumes, the original having been in one. And see post, *Atkyns.*

[3] A new series of this periodical was commenced in 1861, and it should be cited *Am. Law Reg.* N.S.

Amos & Ferard on Fixtures; *Amos & F. Fix.;* 1 vol.; Eng. and Am. notes. Con.[1]

Anderson's Reports; *Anderson* (or †*And.*); Eng. C.P. and Court of Wards; 1 vol. 2 parts; 1534–1604.[2]

Andrews's Reports; *Andr.;* Eng. K. B.; 1 vol.; 1737, 1738.[3]

* Angell's Reports. Same as *R.I.* vol. 1.

Angell on Common Carriers; *Angell Car.* (or *Ang. Car.*); Am. Con.[4]

[1] The second English edition of this work was prepared by Mr. Ferard alone; and the second American edition, published in New York in 1855, does not have the name of Amos upon the title-page, but it there appears as the work of Ferard alone. I *think* this is not so with the second English edition, from which this American one was reprinted, though I never saw it. At all events, Amos's name appears with Ferard's in the advertisements of the London booksellers; and plainly, with us, the work, in both editions, should be cited under the joint names of the two original authors.

[2] This is a posthumous book, printed, as it was written, in law French. I am not aware that there has been any translation of it into English, or any second edition. This is somewhat remarkable, since Anderson was a lawyer of considerable ability, and a chief justice (of the court of Common Pleas) who made his mark in his time; and this volume of reports has always stood well, considering that it is of the posthumous class. The abbreviation used to be *And.;* and *Andr.* stood for *Andrews*, a later reporter. But as these reporters are not so familiarly known as some others, it is better to distinguish them by writing *Anderson* in full. See ante, § 508, 509.

[3] The reports in this volume, covering but a brief period, are more full, and, consequently, more satisfactory, than most of the other published reports of the time. They stand well with the profession, and can doubtless be relied upon implicitly for accuracy. Mr. Vernon, who edited a second edition in 1791, says, in his Preface: "Many of the cases are also reported in 'Strange's Reports,' in 'Cases temp. Lord Hardwicke,' and elsewhere; but the superiority of Mr. Andrews's report, in almost every instance, is extremely conspicuous."

[4] There are several works, now in use, by the late Mr. Angell. The most important of the others are, on "Watercourses," on "Life and Fire Insurance," and on "Limitations of Actions." In connection with Mr. Durfee he prepared a treatise on the "Law of Highways," which the latter finished and put through the press after the decease of the former; and, in connection with Mr. Ames, afterward Chief Justice of Rhode Island, a treatise on the "Law of Private Corporations Aggregate." Mr. Angell was a Rhode Island lawyer, and a man of considerable ability. His works are not of the sort which do much to advance the science to which they are devoted; but they are written with conscientious care, and with commendable legal research. Their author was a man who stood, in a good degree, upon his own merits; and, in preparing his books, he did not purloin the results of other men's labors without giving them credit, or assume to do what he did not accomplish. This gem of *honesty* (see ante, § 267) — which is of such a nature that it never stands alone, but is always studded round by other gems, attracted to it — is the centre of the constellation which is the principal charm of his works. The consequence is, that his books always stood well during his lifetime, they are much sought after now, and are likely to live for a considerable time to come. Personally, Mr. Angell was a man much to be admired; though, like the

Angell & Ames on Corporations; *Angell & Ames Corp.;* 1 vol.; Am. Con.

Angell & Durfee on Highways; *Angell & D. Highways;* 1 vol.; Am. Con.

* Annaly's Reports; * *Ann.* Same as *Cases temp. Hardwicke.*

Anstruther's Reports; *Anst.;* Eng. Ex.; 3 vols.; 1792–1797.[1]

Anthon's Nisi Prius Reports; *Anthon* (or *Anth. N. P.*); N.Y.; 1 vol.; 1808–1851.[2]

* Appleton's Reports. Same as *Maine Reports*, vols. 19 and 20.

Archbold's Criminal Pleading and Evidence; *Archb. Crim. Pl. & Ev.* (adding the edition); Eng. and Am. notes. Con.[3]

rest of mankind, he had his human infirmities, which vary in degree with different men. Those who knew him most intimately were the loudest in his praise. May the good which was in him be long remembered, and the light which flowed from his pen not fade out!

[1] These reports do not stand very high in professional estimation.

[2] In Abbott's Dig. vol. i. Int. p. xiii., is the following note: "This volume, in the first edition (published in 1820), contained reports of trials at *nisi prius* in the Supreme Court, between 1808 and 1816, in a regular series. In the second edition (1854), were inserted a considerable number of miscellaneous cases, tried at various dates, from 1807 to 1851, and in the New York Superior Court, as well as in the Supreme Court. In a large portion of these latter cases, Mr. Anthon himself was engaged as counsel. The cases are accompanied, especially in the second edition, with elaborate annotations, which have been much approved. In many instances, one may find in this volume a report of the trial of a case afterward reported, upon the argument *in banc*, by Johnson and others. In this point of view, the volume has a considerable historic interest and value; but the cases themselves are seldom cited as authorities."

[3] Mr. Archbold's books are quite numerous, and they need not all be mentioned here. Most of them have been reprinted in this country, either with or without American notes, and some of them have had a large circulation on both sides of the Atlantic. For reasons with which I am not familiar, some of them have, during the life of the author, been produced at home, in new editions, *under other editors.* This is certainly a singular state of things, and shows that "there is a screw loose somewhere," either in the author's mental or moral system, or in somebody's else. The structure of these books is very uniform: they consist, for the most part, of terse enunciations of the decided law, as it appears in the head-notes of the respective reporters, arranged in an order convenient for practical use. Occasionally something of a little higher sort flows from his pen. (See 1 Bishop Crim. Proced. § 1087, 1088.) Yet his books have been popular, because they have been found convenient and, in the main, accurate. True, an American author, unaided by position, or by fame acquired outside his books, could not attain to so much celebrity without some display of a higher order of ability; but, in England, not much is expected of legal authors; and, in the United States, we reverence what is English, because of its source. It is interesting to notice, as one turns over our own reports of law cases, how often our American judges, of all classes, refer to the most insignificant English productions, bearing the false titles of law treatises, and even decide depending causes upon them, thus basing the rights of American

Archbold's New System of Criminal Procedure; *Archb. New Crim. Proced.;* 1 vol.; Eng. and Am. notes. Con.[1]

Archbold's Justice of the Peace; *Archb. Just. Peace;* 3 vols.; Eng. Con.

* Archer's Reports. Same as *Florida Reports*, vol. 2.

Arkansas Reports; *Ark.*; 1852, 13 Ark., to the present time.[2]

citizens on the softest English brain-material to be found; while many of them will not deign so much as to look into an American law book, however worthy, certainly will not make a reference to it, though they may appropriate its views without credit, unless it has first been puffed at home until all ears are filled with the din of its praise. In other words, human nature is the same in this country as elsewhere, and the same on the bench as off. All references to this work of Archbold's should state the edition; because there is no proper way of referring to it except by page, and the paging of the respective editions differs. I have marked this book as *contemporaneous*, with American notes; but the last American reprint was as far back as 1846.

[1] In the United States, this book, with the American notes, — the whole printed, in one edition, in three volumes, and in another edition, in two volumes, — is sometimes known and cited as "Waterman's Archbold," the notes having been prepared under the editorship of Mr. Waterman. The first and only English edition of it was published in 1852. There have been two American editions, as just mentioned. It was written to explain the new English system of criminal procedure, known as Lord Campbell's Act (14 & 15 Vict. c. 100). As this system of procedure is not in use in the United States, it is a little singular — perhaps noteworthy — that the work written to explain it should, with us, have superseded the earlier work by the same author, written in explanation of the system which we have. And see 1 Bishop Crim. Proced. § 1088.

[2] The reports of this State date back to 1887. The first five volumes are by Pike. Formerly these were always cited by his name. English succeeded him, and produced seven volumes, which were, and still are, called "English's Reports." But the eighth volume of English was called by its compiler "13 Arkansas," a number made up by counting in Pike's and English's previous volumes. The change was explained, in the Preface, as follows: "When first appointed reporter, it being the universal custom in England, and the prevailing custom in the United States, for reports to take the name of the reporter, and the legislature having made no provision on the subject, I thought proper, with the approbation of the judges then upon the Supreme Bench, to follow the general usage, and therefore adopted the style, 'English's Reports,' for my volumes. The present judges having suggested the propriety of a permanent style, for the sake of uniformity, through all coming time, regardless of changes in the office of reporter, I have cheerfully yielded, and adopted the style preferred by them." The eighth of English, therefore, should not be cited by the reporter's name, but 13 Ark.; and the same rule should govern in the citation of all the subsequent reports of this State. As to the previous reports, it was quite convenient to call 1 Pike, "1 Ark.," and so on of the rest of this series, and this style seems now generally to be followed in that State. But the first seven volumes of English's reports could not be managed so, because the numbers on the volumes, as printed, would not correspond to the new style; therefore these continue to be cited as English's Reports. Since uniformity, therefore, cannot well be adopted as to the past, it has always been my own practice to

Arkley's Reports; *Arkley;* Scotch, criminal; 1 vol.; 1846–1848.

Armstrong, Macartney, & Ogle's Reports; *Arms. M. & O.;* Irish, N. P.; 1 vol.; 1840–1842.

Arnold's Reports; *Arnold* (or *Arn.*); Eng. C. P.; 2 vols; 1838 and 1839.[1]

Arnold & Hodges's Reports; *Arnold & H.* (or *Arn. & H.*); Eng. Bail. and Pr.; 1 vol.; 1840 and 1841.[2]

Arnold on Insurance; *Arnold Ins.* (or *Arn. Ins.*); Eng. and Am. notes; 2 vols. Con.

Ashmead's Reports; *Ashm.* (or *Ash.*); Pa.; 2 vols.; 1808–1841.

Atkyns's Reports; *Atk.;* Eng. Ch. 3 vols; 1737–1754.[3]

Ayliffe's Pandects; *Ayl. Pand.;* Eng.; 1 vol. fol.; 1734.

Ayliffe's Parergon; *Ayl. Parer.;* Eng.; 1 vol. fol.; 1726.[4]

§ 561. A. — Further Abbreviations.

A. Front of the leaf, and some other meanings.[5]

cite Pike's reports by the name of the reporter, as well as the first seven volumes of English; and this is believed to be the general style of law writers and judges out of the State. Possibly, in time, all the volumes will come to be known everywhere as "Arkansas Reports."

[1] The second of these two volumes was never finished.

[2] The first and only volume was never finished. It contains 208 pages.

[3] These reports embrace a considerable period of time, during which Lord Hardwicke, a famous chancery lawyer, presided in the court of chancery. The contemporaneous reporters, whose labors were in the same court, are Ambler, from 1737 to 1784 (see ante, *Ambler*, and note); and Vesey, Sen., whose reports, in two volumes, extend from 1746 to 1755; also Ridgeway. None of these reporters have done full justice to their subjects. But subsequent editions of their reports, by editors who have resorted to such means as were at hand to correct former errors, are now accepted as tolerably satisfactory records of what actually took place under the administration of this great lawyer. See Wallace Reporters, 3d ed. 319, and other places, for fuller statements of this matter. My own impression is, that Hardwicke was not a judge so easily reported, in reports both accurate and elegant, as some others; and, when the notes of the reporter were upon a plan of great brevity, the difficulty was very considerable. Hence the reporters upon this plan all, in a certain measure, failed. But if the reader will take into the account the *facts* appearing in each case, and consider the language of the court as limited and controlled in meaning by these facts (which, indeed, he ought to do in examining every legal report, see ante, § 258, 393, 452, 454), he will be able to draw from them tolerably satisfactory results.

[4] The former of these two works by Ayliffe is upon the Roman civil law, and the latter is upon the canon law, particularly as received and modified in England. Both works are learned, both are pedantic, and neither is of the very first class authority. Still they are not unworthy of attention, and the latter especially may often be consulted with advantage, particularly on questions of marriage and divorce, and their kindred subjects. And see 1 Bishop Mar. & Div. 4th ed. § 59.

[5] Many of the older law books, in folio, were originally printed with their *leaves,*

A.B. Anonymous Benloe; that is, the part of the book of reports by *Benloe*, printed in 1661, usually called New Benloe, which consists of cases not reported by Benloe, but by some person whose name is not given, called, therefore, *Anonymous*.[1]

or folios, instead of their pages, numbered. Thus, placing before me an old edition of Lord Coke's Reports, printed in black-letter and law French, I read, in the right hand upper margin of the first leaf which follows the prefatory matter, "Fol. 1." Then, this leaf being turned over, the next leaf appears, in like manner, numbered "2," omitting the abbreviation "Fol." And thus the leaves are numbered through the book. When these reports were given to us in their modern dress, what was taken from the right hand side, or front, of the first leaf was marked 1 *a*, and what was taken from the left hand side, or back, of the same leaf was marked 1 *b*. Thus the numbering of the folios, and the distinction between the front and back, were preserved through the entire reprint. And writers, to promote precision of citation, usually add *a* or *b*, as the case may be, to the number of each folio to which they refer. If the letter is not added to the figure indicating the folio, the only inconvenience is, that the reader is required to look, for the passage, through the matter which was originally printed on both sides of the leaf, instead of being directed to one side alone. The *a* and *b* are generally written in what printers call *lower-case* letter, in the italic character, and separated by a thin space from the figure, as above. But some writers put it thus: 1 a, 1 b; or, 1, a, 1, b; or, 1. a, 1. b. Yet this is not the only meaning of these letters, printed in this manner. For example, I now take from my shelves the last edition of Plowden's Reports, being the one printed at London in 1816, in octavo. In this instance, the letters *a* and *b*, written as above described, appear, on inspection, not to mean that the matter originally stood on the front and back respectively of the several leaves; but, a page containing very much less than did a leaf or page in the former editions, each page of this reprint has at the top (in addition to the side paging) a figure indicating the page in the former editions, and when this figure requires to be repeated on the next page, the *a* is added, and when on the next still further on, the *b* appears. An author, therefore, referring to this book, would not ordinarily add the *a* and *b* respectively to the figures indicating the page; unless, indeed, he mentioned the edition; because he would not thereby aid a reader who, tracing out his references, might use any other edition. Again, sometimes an author or editor, preparing a new edition of a work, and preserving the former paging, adds pages of new matter; in such a case, it is not unusual to employ the letters of the alphabet, written in the same manner, to indicate the new pages. The figure denoting the last preceding page of the old matter is augmented by the added *a*, *b*, *c*, or the like; and thus the book shows on its face pretty nearly what is new, while at the same time references to a preceding edition can be traced out in the later edition. Where law books are written in sections, numbered consecutively form the beginning to the end of the volume, this method of denoting the new sections becomes particularly convenient. And thus we see one reason among many, why it is better for a legal author to call his paragraphs sections, and number them in this way, so that all references to his book shall be made to the section, and not to the page, than it is to pursue the less convenient method of requiring references to be made to the page. Where a book, written in sections, is still printed with the pages

[1] And see post, § 562, *Benloe*.

Anon., **An.*, or **A.* Anonymous.[1]

A. K. Mar. See *Marshall, A. K.*

Anne (or *Ann.*) The reign of Queen Anne; as. 1 Anne, c. 8; the meaning of which is, the first year of the reign of Anne, chapter 8. Also **Annaly*, which see.

Ass. Book of Assizes and Pleas of the Crown, constituting part five of the Year Books.[2]

§ 562. B. — Principal Collection.

Bacon's Abridgment; *Bac. Ab.;* Eng. and Am. additions.[3]

numbered at the top, a careless writer sometimes refers to the page; and thus, when new editions appear, confusion comes. To avoid this, and for other reasons of convenience, the present author directed the printers who set up his first book to place the number of the last section on each page, preceded by the section mark, at the top of the page, where the number of the page usually stands; and merely to preserve the number of the page, for the convenience of the binder, in the lower margin, in brackets. This method was found to be so much better for practical purposes than the old, that he has pursued it ever since, and several other authors have followed in the same path.

[1] Where a reporter does not wish to give the names of the parties, he sometimes entitles the case "Anonymous," and sometimes he omits even this meaningless word. In either alternative, a writer who cites the case may, and usually does, call it "*Anonymous.*" It is hardly necessary, and not widely customary, to abbreviate the word.

[2] These are criminal cases which occurred in the reign of Edward III. As to the general method of citing the Year Books, see ante, § 514. This fifth part, it is therefore seen, is usually cited differently from the rest. Thus, in Tomlins's Repertorium, we have, "Christchurch Prior's case, Ass. 45, p. 13." Then there is another case of the same name, reported in another part of the Year Books, referred to as follows: "15 E. 4, 27, p. 4."

[3] See ante, § 222. The first edition of this work was printed in 1736 and some subsequent years, the volumes being issued separately. The second edition was in 1762, the third in 1768, and the fourth in 1778. These editions were severally in five volumes folio. The fifth edition, enlarged by Gwillim, was published in 1798, in seven volumes octavo. The subsequent English editions are in octavo, as follows: the sixth in 1807, and the seventh in 1832, in eight volumes. Besides these, there are various Irish reprints. Afterward, under various dates appearing upon the title-page, originally between 1842 and 1846, an American edition of this work was published in ten octavo volumes. One volume was edited by Judge Randall, a part of another by Peterson, and the remainder by Judge Bouvier; the whole being now known as Bouvier's edition. The American additions are considerable, and they are very well done. In citing the work, it is plainly best to refer to the particular article by name, and its subdivision, not to the volume and page; as, — Bac. Ab. Action on the Case, F., 2. Bridgman says this work "is methodized and digested in a luminous and scientific manner, and is the first compilation of the kind that has been put together without engrafting it on the

* Bagley's Reports. Same as 16–19 *California*.

Bailey's Law Reports; *Bailey* (or *Bail.*); S.C.; 2 vols.; 1828–1832.

Bailey's Equity Reports; *Bailey Eq.* (or *Bail. Eq.*); S.C.; 1 vol.; 1829–1831.

Baldwin's Reports; *Bald.*; U.S.; 3d Circuit; 1 vol.; 1828–1833.

Ball & Beatty's Reports; *Ball & B.*; Irish, Ch.; 2 vols.; 1807–1814.

Ballantine on the Statute of Limitations; *Bal. Lim.*; 1 vol.; Eng. ed. 1810, Am. eds. 1812, 1829, by Tillinghast.

* Banks's Reports. Same as 1–3 *Kansas*.

* Barber's Reports. Same as 14–20 *Arkansas*.

Barbour on the Criminal Law of New York; *Barb. Crim. Law*; 1 vol.; 2d ed., 1852.

Barbour's Chancery Practice; *Barb. Ch. Pract.*; Am.; 2 vols.; 1843, 1844.

Barbour on Parties; *Barb. Parties*; Am.; 1 vol.; 1865.

Barbour's Supreme Court Reports; *Barb.* (or *Barb. S.C.*); N.Y.; 1847 to the present time.[1]

stock of some antecedent writer of the same description." Bridgm. Leg. Bib. 10. This probably explains why it was called, on its title-page, "A *New* Abridgment of the Law." The work is not really Matthew Bacon's; for he was only the principal one of its editors. It is believed to have been taken, in the main, from manuscripts left by Lord Chief Baron Gilbert; and, in Viner's Abridgment, it is, in one place at least, cited under the name of Gilbert's New Abridgment. It is a work of considerable authority, as well as a convenient manual for consultation. By many eminent lawyers and judges, it is very highly regarded and much used. Yet, for a student or young lawyer, who has not learned to distinguish between what is now law, and what is either obsolete, or was never sound in legal doctrine, it is a weapon a little liable to wound in the wrong place. This, however, is true of most of the old books. For myself, employing books as I do, merely in the way of authorship, and always having the later cases before me, collected in another way, I generally consult an old edition of this work, where I have the original authority, free from the rubbish piled on by subsequent editors, in preference to a late and edited one. Still, for a practitioner, the latter is doubtless best.

[1] The Supreme court of New York is not the highest court of the State; but an appeal lies from its decisions to the Court of Appeals, — for an account of the reports of which court, see post, *New York*. Abbott's Digest contains the following note respecting Barbour's Reports: "The series embraces the adjudications of the court in all the eight districts into which the State is divided; and includes the more important cases decided at special term, as well as the general-term decisions. Quite a number of the cases are duplicates of reports published in Abbott, Howard, Parker, and other series. The reports are somewhat deficient in accuracy; owing chiefly, it is probable, to the difficulty of collecting all the requisite papers from so many different districts; and a number of the decisions have been reversed, either in the Supreme Court, or by the Court of Appeals. The series is, however, regarded as official, and is of substantial value to the practitioner." 1 Abbott Dig. Int. p. xiv. It is plain, however, from this statement, that the decisions reported in Barbour cannot have the force of authority, in the strictest sense, at home;

Barbour's RChancery eports; *Barb. Ch.;* N.Y.; 3 vols.; 1845–1848.[1]

Barnardiston's Reports; *Barn.* (or †*Barn. K.B.*[2]); Eng. K.B.; 2 vols.; 1726–1735.[3]

Barnardiston's Chancery Reports; *Barn. Ch.;* Eng. Ch.; 1 vol.; 1740, 1741.

Barnes's Notes of Cases in Points of Practice; *Barnes* (or *Barnes Notes*); Eng. C.P.; 2 vols.; 1732–1760.[4]

while abroad they can have no weight beyond what adheres to their respective reasonings and general legal merits. In these respects, they differ greatly; some of them being pure gold, others pure dross, and others being neither the one nor the other purely. They all proceed from political judges, who, being periodically elected, have constantly to look after a future election, as well as to attend to their judicial duties. See ante, § 475. Out of the State of New York, I presume the judges generally permit Barbour's Reports to be cited to them: I know they sometimes do; though, on the other hand, counsel have been stopped who have attempted to cite them. It could not be stated in advance what weight, or whether any, a decision from Barbour would have with the tribunal.

[1] These reports are entirely unlike those spoken of in the last note. The cases reported are from the old Court of Chancery, now abolished. They were decided by the late Chancellor Walworth, a judge of eminent ability, of great learning, and of untiring industry; who, to these qualifications, added the further one of sitting without the thought of making preparation with the multitude who know nothing of law, to meet the trials of a contest for re-election.

[2] See ante, § 511, 512.

[3] These reports, and the Chancery reports by the same reporter, to be stated next in the text, have been greatly decried by some, while by others they have been pretty well esteemed. See Wallace Reporters, 3d ed. 261. That they have never been produced in a second edition argues, perhaps, an adverse judgment by the profession, on the whole. My own impression of them, on such examination as I have made, is, that some outside prejudice must have contributed to the first very unfavorable opinion, and that, on the whole, they are a tolerably good record of well-considered cases. Still, they are plainly not of the highest order. It is perhaps better not to abbreviate this name in citing the book; because the common abbreviation, *Barn.*, might be mistaken for Barnes (see ante, § 509), and because the references to it will never be numerous.

[4] The last edition of this book, marked on the title-page as the third, was published in 1790, in octavo; the first edition was also in octavo, but it brings the cases down only to 1756. There is a quarto edition of 1772; and the paging of this and the octavo editions differs. Also, an edition purporting to be the 2d, "revised and corrected," appeared in Ireland in 1788. It is better, therefore, that any reference to this book should mention the edition. Various opinions have been expressed of its merits. See Wallace Reporters, 3d ed. 262; Bridg. Leg. Bib. 12. It is certain that not every thing to be found in it is law now on either side of the Atlantic. But the law itself changes, in questions of practice, more rapidly than in any other. The court may likewise have made decisions which were never sound, while the reporter did not exercise a discrimination to reject them from his book. On the whole, I see no reason why these volumes should not be deemed to contain a faithful record of what actually transpired.

Barnewall & Adolphus's Reports; *B. & Ad.;* Eng. K.B.; 5 vols.; 1830–1834.

Barnewall & Alderson's Reports; *B. & Ald.* (or *B. & A.*); Eng. K.B.; 5 vols.; 1817–1822.[1]

Barnewall & Cresswell's Reports; *B. & C.;* Eng. K.B.; 10 vols.; 1822–1830.

Barr's Pennsylvania State Reports; *Barr Pa.* (or *Barr*, or 1–10 *Pa. State*); 10 vols.; 1845–1849.[2]

Barrington's Observations on the more Ancient Statutes; *Barrington Stat.* (or *Bar. Stat.*); Eng.[3]

Batty's Reports; *Batty* (or *Bat.*); Irish, K.B.; 1 vol.; 1825, 1826.

Bay's Reports; *Bay:* S.C.; 2 vols.; 1783–1804.

* Bay's Reports. Same as 5–8 *Missouri.*

Bayley on Bills; *Bayley Bills* (or *Bayl. Bills*); Eng. and Am. notes. Con.[4]

Beasley's Reports; *Beasley* (or *Beas.*); N.J. Ch.; 2 vols.; 1858–1860.

Beatty's Reports; *Beatty* (or *Beat.*); Irish, Ch.; 1 vol.; 1814–1830.[5]

Beavan's Reports; *Beav.;* Eng. Ch.; 35 vols.; 1838–1866.

Beck's Medical Jurisprudence; *Beck Med. Jurisp.;* 2 vols.; Am. Con.[6]

[1] The 1st part of vol. 1 was reported by Selwyn and Barnewall, though this fact is not stated in the book as bound up. These reports, it is perceived, are anterior to those by Barnewall and Adolphus; therefore, at first, the abbreviation was generally *B. & A.;* but, within a principle stated ante, § 509, it is now customary, and it is best, more clearly to distinguish these reports from the others by the form of the abbreviation.

[2] See post, *Pennsylvania State.*

[3] There are five editions of this work, published respectively in 1766, 1767, 1769, 1775, and 1796, all in quarto. The edition of 1796, being the fifth, is merely a reprint of the fourth. The paging of some of the editions differs, consequently every citation should mention the edition. It is a work of considerable interest, particularly of the legal-historical sort, though it cannot be deemed as of commanding authority. Many of the statutes observed upon are of common-law force in the United States.

[4] This work, in one volume of moderate size, is an able and condensed summary of points of law relating to bills of exchange and promissory notes. It is not so much used now as it was a few years ago. The *plan* of the work seems, to superficial observers, admirable, but practically it is not found to be good. See ante, § 184–186, 190, 191. If any book which teaches the law in the order of *points*, in distinction from *principles*, could become immortal, this work would never die, so ably and well is it done. But it now scarcely lives, and soon it will be "known no more for ever." It was succeeded, in point of time and in public favor, by Byles on Bills (see ante, § 171, 172), a work of a similar kind, and not quite so good as this. Byles also must pass away, together with all other earthly trash. Ante, § 178.

[5] This work must not be confounded with *Batty's* Reports.

[6] This work has passed through numerous editions, and it has been very much approved and used. It is the largest of the treatises on the subject; and, on the

Bee's Reports; *Bee;* U.S. Dist. of S.C.; 1 vol.; 1780–1809.[1]
Bell's Commentaries; *Bell. Com.;* 2 vols.; Scotch. Con.[2]
Bell's Law of Property relating to Husband and Wife; *Bell Hus. & Wife;* Eng.; 1849.

whole, its merits are considerable. Thus far, no work has appeared likely to supersede it. At the same time, the *legal* part of the subject is not discussed in a manner to be of much service to the lawyer; for, its authors not being lawyers, it was not reasonably within their capacity to do this part well. It is the medical and surgical part which principally attracts attention.

[1] There is an Appendix to this volume, containing decisions in the Admiralty Court of Pennsylvania by Judge Hopkinson, and some cases determined in other districts. There is, also, a thin volume, very scarce, and not easily obtained, published at Philadelphia, 1789, made up of a few of Judge Hopkinson's decisions.

[2] This work is of great authority, in Scotland and elsewhere, upon questions relating to the Scotch law. It should not be confounded with other works by the same author, — of which there are several, all less noted than this, — and by other authors of the name of Bell. Mr. Warren says of it: "In the year 1816, Mr. Bell undertook the arduous task of preparing his Commentaries on the Laws of Scotland and on the Principles of Mercantile Jurisprudence; proposing to himself a free examination of the principles of mercantile law, as illustrated by the decisions and legal authorities of England as well as of Scotland, with a view to contributing to the improvement of this great system in both countries, and enabling the lawyers of England to become better acquainted with the Scottish jurisprudence than they had hitherto found to be practicable. This object Mr. Bell has certainly attained. His Commentaries constitute a mine of mercantile law, the value of which is best appreciated by those who have most frequent occasion to search for analogies in discussing questions of mercantile law (whether in the capacity of lawyers or legislators), to observe the striking contrasts often afforded by the conflicting provisions of the two systems, and endeavor to decide between the two by a careful reference to those first principles which ought to regulate each." Warren Law Studies, 2d ed. 890. Mr. Bell was born at Edinburgh, March 26, 1770; was admitted to the bar of Scotland in 1791; elected Professor of the Law of Scotland in the University of Edinburgh in 1822; died 1843. The last edition of the Commentaries, of which I have any knowledge, was published in 1858, being the sixth edition, and the next published after the death of the author. It was edited by Patrick Shaw, who says in the preface: "For some time prior to his death, the author was engaged in preparing a new edition. He had expunged and rewritten a considerable portion of the first volume of the last edition. Of that manuscript I have availed myself. I have also taken advantage of his other works to make this edition more complete, and, in some instances, to introduce from that source chapters entirely new." This edition is in octavo, the others having been in quarto. After the author was appointed to the law-professorship, he published, in a thin octavo volume, which, in subsequent editions, has grown to be a thick volume, a work entitled "Principles of the Law of Scotland." It is made up chiefly of outlines from his Lectures, and is intended for the use of students. To me it seems too brief, and composed too little of "principles," to accomplish its object well; though it is a work of real interest, and, perhaps, on the whole, merits the extensive circulation which it has received. The other works of the author are less known, and, probably, less useful than these.

Bell's Appeal Cases; *Bell Ap. Cas.;* House of Lords, on Appeal from Scotland; 7 vols.; 1842–1850.

Bell's Crown Cases Reserved; *Bell C. C.;* Eng.; 1 vol.; 1858–1860.

Bellewe's Cases in the time of Richard II.; *Bellewe Cas. temp. Rich.* II. (or *Bel.*); Eng.; 1 vol.[1]

* Bellewe's Cases temp. Hen. VIII., Edw. VI., and Mary. Same as *Brooke's New Cases.*[2]

Belt's Supplement to Vesey, Sen.'s Reports; *Belt Sup. Ves.;* 1 vol.[3]

Benloe's Reports; *Benloe* (or *Benl.*); Eng. C.P.; 1 vol. (bound up with Dalison); 1486–1580. Also, another book, stated in the note.[4]

[1] This book consists of cases collected out of the abridgments of Statham, Fitzherbert, and Brooke. It was printed in 1585, and I am not aware that there has ever been any subsequent edition. Like other law books of the time, it is in French, but, unlike such books, generally, it is in octavo, and not in quarto. It must not be confounded with the book next to be mentioned in the text. This volume is, perhaps, never referred to in modern times, for the obvious reason that one would always prefer to consult the original source, rather than what is merely thus taken from it. The collector proposed to follow with other reigns (besides that of Hen. VIII., &c., already done); but, for some reason, probably because the work did not receive sufficient patronage, he never did.

[2] See post, *Brooke*, and notes.

[3] I think this is sometimes referred to as 3 *Ves. Sen. Belt's Ed.* And see post, *Vesey.*

[4] This name, Benloe, is also spelled Bendloe and Bendloes. In the very volume first mentioned in the text, it is spelled Bendloe in the preface, while it is Benloe on the title-page. The reports of Serjeant Benloe remained a good many years in manuscript before they were published. The consequence was, that various manuscript copies, and partial copies, and abridgments of them were taken by different persons, and circulated among the limited number of gentlemen who constituted the bar of those days. Some of these reports, not the whole, were printed at the end of Ashe's Tables and elsewhere. At length, in 1661, there was published a volume entitled: "Les Reports des Divers Resolutions et Judgments donné par les Judges de la Ley, de certeine Matieres en la Ley en le Temps del Raigne de Roys et Roignes Hen. VIII., Edw. VI., Phil. et Mar. et Elizab." by Benloe, the name being here spelled Bendloes. The title-page then proceeds: "Avec autres Select Cases en le Temps de Jaques et Charles le I." This book has been mentioned in a previous note (ante, § 561, *A.B.* note), where it is said that the abbreviation *A.B.* refers to the cases by the anonymous reporter following those by Benloe. "This book," of 1661, Bridgman tells us, "is properly cited as New Bendloe, which distinction it obtained before the publication of Bendloe, or Benloe and Dalison, probably to distinguish the cases from those before extant at the end of Ashe's Tables and Keilway's Reports." Afterward, in 1689, there was a republication of Benloe's Reports, from another manuscript, being the one more specifically described in the text. A single folio volume appeared, with a title-page indicating that the volume contained reports, by Benloe and Dalison, of cases and pleadings in the Court of Common Pleas in the several reigns of Henry VII., Henry VIII., Edward VI., and Queens Mary and Elizabeth. Then a separate title-page followed, announcing reports, by Benloe alone, "Des divers Pleadings et Cases en le

Bennett & Heard's Leading Cases in Criminal Law; *Ben. & H. Lead. Cas.;* 2 vols.; Eng. and Am. Cases, with Am. notes; pub. 1856, 1857.

* Bennett & Smith's Reports. Same as *English Law and Equity*, vols. 1–30.

* Bennett's Reports. Same as 1 *California.*

* Bennett's Reports. Same as 16–21 *Missouri.*

Berton's Reports; *Berton.;* N.B.; 1 vol.; 1835–1837.

Best & Smith's Reports; *Best & S.;* Eng. Q.B. and Ex. Cham.; 1 vol.; 1861, 1862.

Bibb's Reports; *Bibb;* Ky.; 4 vols.; 1808–1817.

Bingham's Reports; *Bing.;* Eng. C.P. &c.; 10 vols.; 1822–1834.

Bingham's New Cases; *Bing. N.C.;* Eng. C.P. &c.; 6 vols.; 1834–1840.

Bingham on Infancy; *Bing. In.;* 1 vol.; Eng. and Am. notes. Con.

Binney's Reports; *Binn.;* Pa.; 6 vols; 1799–1814.

Bishop on Marriage and Divorce; *Bishop Mar. & Div.* (or *Bish. Mar.*); 2 vols.; Am. Con.[1]

Court del Comon Bank, en le several roignes de les tres hault et excellent princes le roy Henry VII., Henry VIII., Edw. VI., et le roignes Mary et Elizabeth." After these reports are finished, a new paging begins, and a new title-page announces reports by Dalison. There is, consequently, no connection between the two parts of this volume. Concerning the reports by Benloe, John Rowe writes in the preface as follows: "Having been desired to peruse the printed copy of this book, before it was made public, I have spent a little time in comparing that part of it which is Serjeant Bendloe's, with some other copies which I have, besides those already extant; and I do conclude thereupon, with some assurance, that it contains the original which was left by that serjeant, and that it is the most authentic copy of his whole work. The disproportion in number that the cases already printed do bear to this are obvious; in one copy which I have, there are, in all, two hundred and forty cases, which are many more than are in the best former edition; in another, there are but about one hundred cases, and that was my Lord Coke's own copy, which he used and noted with his own hand. And it is manifest that those different copies were but different notes and extracts from the original, wherein such as collected them made use of their own judgments in the manner of abridging, and in the choice of the cases; and under the same observation may not improperly fall the notes of some of the same cases which we find in the beginning of Anderson and Moor, and in some places in Leonard's Reports." The opinion thus expressed of the book has, I think, been ever since entertained by the profession; this volume being usually, if not always, referred to whenever any reference is made to Benloe's Reports. There is no need, therefore, that a reference to these reports should specify the edition, this edition of 1689, bound up with Dalison, being meant, when the contrary is not stated. In matter of fact, it is sometimes found improperly cited as New Benloe, being the name by which the other edition was properly known; and sometimes, more correctly, cited as Old Benloe. It is also correctly enough cited as Benloe with Dalison. The reports of Benloe, both before their publication and since, have been uniformly deemed to have been well done, and to be good authority.

[1] See ante, § 174, 175, 183. The first three editions of this work were in one

Bishop on Criminal Law; *Bishop Crim. Law;* 2 vols.; Am. Con.[1]

Bishop on Criminal Procedure; *Bishop Crim. Proced.;* 2 vols.; Am.; 1866.

Bisset on Partnership; *Bisset Part.;* Eng. and Am. notes. Con.

* Bittleston & Parnell's Reports. Same as 3 *New Magistrate Cases.*

* Bittleston & Wise's Reports. Same as 1, 2 *New Magistrate Cases.*

Black's Reports; *Black;* U.S. Sup. Court; 2 vols.; 1861–1863.

Blackford's Reports; *Blackf.* (or *Blac.* or † *Black.*); Ind.; 8 vols.; 1817–1847.[2]

Blackstone's Commentaries; *Bl. Com.* (or *Black. Com.*); 4 vols.; Eng. and Am. notes. Con.[3]

Blackstone's Reports [William]; *W. Bl.* (or *Bl.* or † *Black.*); Eng.; all the Com. Law courts; 2 vols.; 1746–1749.[4]

Blackstone's Reports [Henry]; *H. Bl.* (or † *H. Black.*); Eng. C.P. and Ex. Cham.; 2 vols.; 1788–1796.[5]

Bland's Chancery Reports; *Bland* (or † *Bl.*); Md.; 3 vols.; 1811–1832.

Blatchford's Reports; *Blatchf. C.C.;* U.S. 2d Circuit; 3 vols.; 1845–1857.

Blatchford's Prize Cases; *Blatchf. Prize Cas.;* U.S. Dist. of N.Y.; 1 vol.; 1861–1865.

volume respectively, and the sections were numbered alike. The fourth edition was swelled to two volumes, not by any great expansion of the discussion, but by taking into the range of the work *new topics.* These new topics relate to the pleading and practice in divorce and nullity cases, to the law of separations without divorce, to the proof of marriage generally and in issues other than matrimonial, and to some other kindred matters. The order of the discussion was changed, and the sections were renumbered. References to this book ought perhaps to mention the edition; though this is not strictly necessary, because, where the reference is to the work in one volume, the reader will know that one of the first three editions is meant, and where it is to the work in two volumes, he will know that an edition is meant in which the sections are renumbered.

[1] The sections in the first two editions of this work are numbered alike; but, in the third edition, the order of the discussion was somewhat changed, and the sections were renumbered. References, therefore, to this work should mention the edition.

[2] See ante, § 507.

[3] See ante, § 202, 294–303, 306, 385, 513. In some of the American editions, this work is bound in two volumes; that is, two volumes in one. Still, it should be cited as in four volumes.

[4] Ante, § 509. This work was intended by Blackstone for publication, but it was not printed till after his death. The second edition, by Elsley, is much better than the first. The reports are given in a very condensed form, and they are not so highly esteemed as, proceeding from the author of the Commentaries, one might suppose they would be. To me, they seem about as satisfactory as could reasonably be expected, considering their brevity. See 1 Bishop Mar. & Div. 4th ed. § 491.

[5] Ante, § 507, 509.

Blatchford & Howland's Reports; *Blatchf. & H.;* U.S. Southern Dist. of N.Y.; 1 vol.; 1827–1837.

Bligh's Reports; *Bligh;* Eng. H. of L.; 3 vols.; 1819–1821.

Bligh's Reports, New Series; *Bligh,* N.S.; Eng. H. of L.; 11 vols.; 1827–1837.

* Booraem's Reports. Same as 6–8 *California.*

Bosanquet & Puller's Reports; *B. & P.;* Eng. C.P. &c.; 3 vols.; 1796–1804.[1]

Bosworth's Reports; *Bosw.;* N.Y. City, Superior Court; 10 vols.; 1856–1863.

Bott's Poor Laws; *Bott P.L.* (or *Bott*); Eng.; 3 vols.[2]

Bouvier's Law Dictionary; *Bouv. Law Dict.;* Am. Con.[3]

[1] There are really five volumes of Bosanquet & Puller's Reports; but vols. 4 and 5 are cited 1 and 2 New Reports, abbreviated *N.R.* or *New Rep.* Occasionally, however, we see these also cited by the names of their reporters.

[2] This work is sometimes known as Bott's Settlement Cases. It has passed into six editions, the paging of which differs, so that every reference to it should state the edition. "The plan of this work," it is said in one of the prefaces, "is to insert, first, the several existing statutes on each subject of the poor laws, and then to add chronologically the cases that have been determined on the several branches of those statutes." It is, therefore, in one sense, a book of reports, while, in another sense, it is a law digest. The fifth edition, now before me, does not have the name of Bott at all upon the title-page, which runs thus: "The Laws relating to the Poor, by Francis Conset," &c. Yet the work is cited under the name of Bott, never under that of Conset. In the preface to this edition, Mr. Conset says: "This work was originally compiled by Edmund Bott, Esq., Barrister at Law, a gentleman whose influence in the profession procured him the means of enriching the two editions which were published under his direction, by inserting in the first of them 'a great number of extracts from a manuscript collection of cases by the late John Ford, Esq.;' and, in the second, 'a variety of additional cases taken from the manuscript of Serjeant Foster.'" The sixth edition, edited by Pratt, brings the cases down to 1827.

[3] This work, by the late John Bouvier, went through several editions during the life of the author. It was a work of considerable merit; and, upon it, the fame of the author mainly rests. A new edition, called, upon its title-page, "twelfth edition, revised and greatly enlarged," has just appeared. I made a single reference to it in a previous note, ante, § 560, *Alabama,* note. In an earlier part of this volume, I stated the principles upon which, in my judgment, the work of a deceased author, especially an honored one, should be brought down and made a living power for present use. Ante, § 299–301, 305. This edition of Bouvier's Law Dictionary is executed upon a plan so entirely different from any thing which I deem justifiable, and the general subject of editing the works of deceased authors is so important in itself, that I deem it essential to make here a few observations on the subject. Turning to the first volume, I find a list of ninety-five gentlemen, who, besides the general editor, have made contributions to the work. There is an indication, not in all instances exact, of the general or particular field which has occupied the several contributors. Articles from the deceased author have been taken out, and their places supplied by contributions from all sorts of living ones.

Bouvier's Institutes; *Bouv. Inst.;* 4 vols.; Am. Con.[1]
Bracton de Legibus et Consuetudinibus Angliæ; *Bracton.*[2]
Bradford's Surrogate Reports; *Brad.* (or *Bradf.*); N.Y.; 4 vols.; 1849–1857.

Neither is there any exact line drawn anywhere, or in any manner, by which we can certainly distinguish between what came from the late John Bouvier, and what comes from somebody else. The proprietors of the copyright thus say, by their acts, "The late John Bouvier was not competent to write articles to be compared with what we can pick from a miscellaneous congregation of ninety-six living gentlemen. His book was too good to be entirely ignored; but we will kill it, and destroy his fame, by mixing up with it a conglomeration of new matter in such a way that no reader can tell exactly what is old and what is new, therefore none can give the deceased author any credit for any thing found in it." The new matter must necessarily be of all grades of merit, — good, bad, and indifferent. The book, as a whole, can have no position as an authority. If a reader is pleased with something he finds, he cannot thence infer that the whole book is good; if he discovers marked accuracy at some particular place, this argues nothing to him concerning any other place; in short, the practical usefulness of the book is irremediably impaired. The sort of confidence which is won for a good book by our testing it at particular places, and there finding it to be sound and accurate, can never be bestowed upon this altered work. We know beforehand, that it is necessarily good in spots, and bad in spots, and no more can we ever learn of it.

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[1] This work was intended, by its author, to be used chiefly by students as a first book. It goes over the principal field of the law; of necessity, therefore, discussing nothing with any great minuteness. It has been received with some favor; though, if I mistake not, the profession have not generally deemed it worthy to supersede the pre-existing works by Blackstone and Kent. And see ante, § 306. Having read only disconnected passages of the book, I may not be deemed competent to pass upon its merits, yet I will try. It is plainly a work of some value; it is plainly, also, not always precise in its delineations of legal doctrine; and it is not *always* quite accurate. If it were a little better or a little worse, there would be ample room for praise or censure. Books of less merit have not unfrequently had great success for a time; books of greater merit have, in some instances, failed to be well received at first. This was a sincere effort, in an important field, by one of considerable legal ability. Yet, like multitudes of other sincere efforts, by able men, it must, according to present appearances, fade away in the mists of the receding past, instead of lighting the future, as, if tested by the worthiness of the author, one might suppose it adapted to do. If there were no Blackstone and no Kent, its chances would be better.

[2] This is a very ancient law book, the authority of which was once great; but it is now almost obsolete. Lord Coke says: "Right profitable also are the ancient books of the common laws yet extant, as Glanvile, Bracton, Britton, Fleta, Ingham, and Novæ Narrationes; and those also of later times, as the old Tenures' old Natura Brevium, Littleton, Doctor and Student, Perkins, Fitz. Nat. Br., and Stamford; of which the Register, Littleton, Fitzherbert, and Stamford are most necessary, and of greatest authority and excellency." 3 Co. Pref. Thomas ed. vii. See also 10 Co. Pref. xxiv. There are two editions of this work, — a folio of 1569, and a quarto of 1640. They agree in their paging.

*Branch's Reports. Same as 1 *Florida*.

Branch's Maxims; *Branch Max.;* 1 vol.; Eng. and Am. notes.[1]

Brayton's Reports; *Brayt.* (or †*Br.*); Vt.; 1 vol.; 1815–1819.

Breese's Reports; *Breese* (or *Bre.*); Ill.; 1 vol; 1819–1830.

Brevard's Reports; *Brev.;* S.C.; 3 vols.; 1793–1816.

Bridgman's Reports [Sir John]; *J. Bridg.* (or *Bridg.*); Eng. C.P.; 1 vol.; 1613–1621.[2]

Bridgman's Reports [Sir Orlando]; *O. Bridg.* (or *Bridg. O.* or *Bannister's Bridg.*); Eng. C.P.; 1 vol.; 1660–1667.[3]

Every thing we see in it we are obliged to take under caution, and thus we can derive no permanent pleasure from its use, and but little permanent profit. Even the puffing of the editor, as mentioned in the previous note (ante, § 560, *Alabama*, note), cannot save it. This observation is general, applying to any law book got up in this way. A wrong is done to the honored dead, and a wrong to the living members of an honored profession. It is with pain that I am compelled to write thus; but I have never consciously shrunk from any duty cast upon me in preparing a law book, and I will not now. In the present instance, I know the parties concerned sufficiently to say that they are honorable persons, who must have acted through some misapprehension; for they would never intentionally do any human being, living or dead, a wrong. Especially would they not with one hand build a monument to the departed, and with the other knowingly plunge a dagger into his fame. And there are, among the contributors to the work, honorable gentlemen, who, when they wrote articles to supersede Judge Bouvier's, certainly could not have considered what they were doing. Some of these are themselves authors. We cannot presume they would wish the same thing done to their works, when they are no more. To me, at least, it would not be an agreeable reflection, if I were compelled to think, that, when I cease my earthly labors, those who loved me, and whom I had cherished here, should forthwith mix my intellectual dust with other like substances, good or bad, in such a way as to prevent its future identification. The idea of this being done to the dust of the body is not pleasing to any of us, — how much worse, when it is done to the only part which can live on earth, after the life of the body has fled! It may be that all readers will not agree with me now in these observations; if not, I still place them here to stand till all do.

[1] The short title, on the title-page, is "Principia Legis et Æquitatis," therefore the abbreviation is sometimes *Branch Prin.*, or *Bran. Prin.* The American reprint of this work consists of a part of the volume known as Hening's Maxims, published at Richmond, 1824. It comprises also Noy's Maxims and Francis's Maxims. All these books of maxims are practically superseded now by Broom's book. And see ante, § 66, 67, 188.

[2] This is a book of very little authority. There are two editions, both thin folios; one of 1652, and the other of 1659. Being printed before the reports of Orlando Bridgman, the simple abbreviation *Bridg.* came to signify this book. See ante, § 508, 509.

[3] These reports are highly esteemed. They lay in manuscript for a long time, not having been printed till 1823. The volume printed was edited by Bannister, from the manuscripts of Hargrave. It consists only of cases decided by Bridgman while he was Chief Justice of the Court of Common Pleas, and so does not embrace all the manuscript reports which he left.

Bright on Husband and Wife; *Bright Hus. & Wife;* 2 vols.; Eng. and Am. notes. Con.[1]

Brightly's Reports; *Brightly* (or † *Bright.* or *Brightly N.P.*); Pa.; 1 vol.; 1809–1851.

* British Crown Cases Reserved. This is a general title given to an American reprint of some of the English Criminal Cases; but they should be referred to under the names of their respective reporters.

Britton; not usually abbreviated.[2]

Brockenbrough's Reports of Decisions by Marshall; *Brock.;* U.S. 4th Circuit; 2 vols.; 1802–1833.

* Brockenbrough's Reports. Same as *Virginia Cases.*

Broderip & Bingham's Reports; *Brod. & B.;* Eng. C.P. &c.; 3 vols.; 1819–1822.

Brooke's New Cases; *Brooke N.C.* (or *Petit Brooke*); Eng.; 1 vol.; 1515–1558.[3]

[1] This book relates to the law of husband and wife as respects property. Roper wrote a book on the subject; Jacob afterward edited this book with additions; and now Bright has taken the enlarged work, recast it, added matter of his own, and called it after his own name; duly mentioning, however, the sources whence he derived the principal part. For this course he has precedents; still it is not much to be commended. And see ante, *Bouvier's Law Dict.* note. Roper's book was well esteemed; and even Jacob's added part had power enough, on one memorable occasion, to lead astray all the common-law judges of England on a question of marriage law, pertaining, as it did, to a branch of legal learning with which they were not familiar.

[2] This work consists, in a large part, of the ancient criminal law. "And John Britton, bishop of Hereford, wrote an excellent work in the days of King Edward the First, of the common laws of England, which remains to this day." 8 Co. Pref. Fras. ed. xvi. This Britton "died 8 Edw. I.; but, as notice is taken in this book of several subsequent statutes, Bishop Nicholson says, that it was compiled by John Breton, a judge temp. 1 Edw. II. Mr. Selden, however, thinks the name is only another appellation of Bracton." *Bridgman Leg. Bib.* 87. There is an English translation of the part which relates to the criminal law, by Robert Kelham, printed in 1762. This work is of but little practical use at the present day, though occasionally it serves to illumine a point. See ante, *Bracton*, note.

[3] See ante, *Bellewe*, and note. This is merely a collection of cases taken by Bellewe, out of Brooke's Abridgment; but they seem to have a separate value, being composed of those particular cases which Brooke reports in the abridged form, in distinction from what he transferred to his pages or abridged from the works of others. See the next note. And see Wallace Reporters, 3d ed. 91. There are several editions of these cases; as, 1578, 1597, 1604, and 1628. There was also a translation of this book into English by March, printed in 1651, 12mo.; but the translator arranged the matter differently from Bellewe; and, of course, did not preserve the old paging. This translation is, I think, sometimes cited under the name of *March* simply, or *March's New Cases;* but generally, when we see a reference of this sort, it means the book which March himself styled "New Cases," to distinguish it from this, being reports really his own of cases in the time of Charles I. See post, *March.* Modern writers generally refer directly to Brooke's

Brooke's Abridgment; *Brooke Ab.* (or *Br. Ab.*); 2 parts.[1]

Broom's Legal Maxims; *Broom Leg. Max.;* 1 vol.; Eng. and Am. reprint. Con.[2]

Broun's Justitiary Reports; *Broun;* Scotch Crim. Law; 2 vols.; 1842–1845.

Brown's Chancery Cases; *Bro. C.C.;* Eng.; 4 vols.; 1778–1794.

Brown's Parliamentary Cases, continued by Tomlins; *Bro. P.C.;* Eng.; 8 vols.; 1701–1800.

Browne's Reports; *Browne, Pa.* (or † *Br.*); Pa.; 2 vols.; 1806–1814.

Browne on the Statute of Frauds; *Browne Frauds;* 1 vol.; Am. Con.

Brownlow & Goldesborough's Reports; *Brownl.* (or *Brownl. & G.*); Eng. C.P.; 2 parts; 1569–1625.[3]

Buck's Bankruptcy Cases; *Buck;* Eng.; 1 vol.; 1816–1821.

Bulstrode's Reports. *Bulst.;* Eng. K.B.; 3 parts.; 1609–1639.

Bunbury's Reports; *Bunb.;* Eng. Exch.; 1 vol.; 1713–1742.[4]

Burge on Colonial and Foreign Laws; *Burge Col. & For. Laws;* 4 vols.; Eng.; 1838.[5]

Abridgment, or to some subsequent abridgment made up in part from Brooke (see ante, § 218–220), and not to these works of Bellewe and March.

[1] See ante, § 218–220. "Brooke abridges a great number of readings which do not appear to be extant at this day, and quotes a number of cases which seem to have fallen under his own knowledge as a judge and Chief Justice of the Court of Common Pleas, and which are nowhere else extant except in a small volume," &c., being the one last mentioned. Worrall Bib. Leg. ed. of 1788, p. 2; Bridgman Leg. Bib. 38. And see the last note. Fulbeck compares Brooke and Fitzherbert as follows: "Mr. Brooke is more polite, and by popular and familiar reasons hath gained singular credit; and, in the facility and compendious form of abridging cases, he carrieth away the garland. But where Mr. Fitzherbert is better understood, he profiteth more; and his abridgment hath more sinews, though the other hath more veins." Fulbeck Stud. Law, Stirling's ed. of 1808, p. 71, 72.

[2] See ante, *Branch*, note. The paging of the different editions varies, therefore all references to the work should state the edition. There are several other works by Broom, as the reader will see on looking into the law catalogues.

[3] These are chiefly practice cases. They were, perhaps, never of the highest authority, and are rapidly growing less valuable by the lapse of time. The two parts are generally, if not always, bound in one volume. Part 1 is by Brownlow & Goldesborough; part 2 by Brownlow alone. The publication was posthumous. "The old and technical citation of the book is 1st and 2d Brownlow, though this form is not always observed in modern times." Wallace Reporters, 3d ed. 112.

[4] This is a posthumous publication of short notes of cases. It is consequently not very satisfactory, though, on the whole, these reports are to be deemed worthy of some consideration. And see Wallace Reporters, 3d ed. 257.

[5] This is a work of considerable interest and much instruction to persons engaged in the investigation of questions connected with the conflict of laws. It is not, however, a work particularly of *authority*. Its chief feature is, that it furnishes a good collection of material wherewith to compare the laws of different countries with one another, together with occasional discussions of value.

Burn's Justice of the Peace; *Burn Just.;* Eng.[1]

Burn's Ecclesiastical Law; *Burn Ec. Law;* Eng.; 4 vols.[2]

Burn's Law Dictionary; *Burn Law Dict.;* Eng.; 1792; bound sometimes in one volume, and sometimes in two.[3]

Burnett's Reports; *Burnett;* Wis. Ter.; 1 vol.; 1842, 1843.

Burrill on Voluntary Assignments; *Burrill As.;* 1 vol.; Am. Con.

Burrill on Circumstantial Evidence; *Burrill Cir. Ev.;* 1 vol.; Am. Con.

Burrill's Law Dictionary; *Burrill Law Dict.;* 2 vols.; Am. Con.

Burrow's Reports; *Bur.* (or *Burr.*); Eng. K.B.; 5 vols.; 1756–1772.[4]

Burrow's Settlement Cases; *Bur. Set. Cas.;* Eng. K.B.; 1 vol.; 1732–1776.

Busbee's Law Reports; *Busbee;* N.C.; 1 vol.; 1852, 1853.

[1] This is an instance of a law book which has commanded considerable professional attention, written by a clergyman; who was likewise, however, a justice of the peace. "In 1755, he first published his 'Justice of Peace and Parish Officer, upon a Plan entirely new, and comprehending all the Law to the present Time.' This edition, as well as a second in 1756, was published in two volumes octavo. A third was also published in 1756, in folio. A fourth, 1757, in three volumes octavo. A fifth in 1758, in folio. A sixth in 1758, in three volumes octavo. A seventh in 1763, the same. An eighth in 1764, in two volumes quarto. A ninth, tenth, eleventh, twelfth, and thirteenth, in 1766, 1770, 1772, and 1776, in three volumes octavo. The fourteenth edition was the first which was published in four volumes octavo, in which form it has passed on with gradual amendments, continuations, and improvements, through the years 1785, 1793, 1797, 1800, and 1805, in which latter year, the twentieth edition was published by William Woodfall, Esq., Barrister at Law." Bridgman Leg. Bib. 42, 43. Since this edition by Woodfall appeared, it has gone on, edited by various persons, among the rest by the prolific law writer Joseph Chitty, until it has reached the twenty-ninth edition, in seven volumes, which are described in the bookseller's advertisement as "very thick." A thirtieth edition, wherein the work is to be *reduced* to five volumes, is advertised by London publishers as in preparation; but, at the time of this writing, it has not, I believe, reached its actual publication. Undoubtedly most of the sale of this work has been to non-professional magistrates, yet it has been considerably bought and consulted by the profession also. It is convenient, and reasonably reliable in its statements of the law. To any higher merit it does not aspire, and no more could it justly claim.

[2] This work is similar in its character to the one last mentioned. It was originally in two volumes. The first edition in four volumes was the third, in 1775. The last edition was the ninth, edited by Robert Phillimore, and published in 1842. It contains large additions, consisting chiefly of extracts from the decisions of the ecclesiastical courts. And see 1 Bishop Mar. & Div. 4th ed. § 60.

[3] I am not aware that there has ever been but the one edition of this work; yet it is a work truly of considerable merit, and many poorer books have received more attention.

[4] These reports, by Burrow, are occupied, to a great extent, with decisions by the celebrated Lord Mansfield. The opinions of the judges are set down somewhat briefly; but the reports are considered to be very accurate, and they have always been held in high repute.

Busbee's Equity Reports; *Busbee Eq.;* 1 vol.; N.C.; 1852, 1853.
Byles on Bills; *Byles Bills;* 1 vol.; Eng. and Am. notes. Con.[1]

§ 563. B. — Further Abbreviations.

B. Back of the leaf, and some other meanings.[2]
B. Monr. See post, *Monroe.*
B.R. King's Bench.

§ 564. C. — Principal Collection.

Caines's Reports; *Caines* (or *Cai.*); N.Y.; 3 vols.; 1803–1805.[3]
Caines's Cases; *Caines Cas.* (or † *Cas. C.* or *Caines Cas. in Er.*); N.Y.; 2 vols.; 1801–1805.
Caldecott's Reports of Justice of the Peace Cases; *Cald.;* Eng.; 1 vol.; 1776–1785.[4]
Caldwell on Arbitration; *Caldw. Arb.;* 1 vol.; Eng. and Am. notes. Con.
California Reports; *Cal.;* 1850 to the present time.[5]
Call's Reports; *Call;* Va.; 6 vols.; 1797–1825.
Calthrop's Reports; *Calth.* (or * *Cal.*); K.B.; 1 vol.; 1609–1618.[6]
* Cameron's Reports. Same as 1 and 2 *Upper Canada Queen's Bench.*
* Cameron & Norwood's Reports. Same as *Conference.*

[1] See ante, § 171, 172; also, *Bayley,* note.

[2] See ante, § 561, *A.,* note.

[3] The title of this work, by which it may be distinguished from Caines's Cases, is: "New York Term Reports of Cases argued and determined in the Supreme Court of that State." The title of Caines's Cases is: "Cases argued and determined in the Court for the Trial of Impeachments and the Correction of Errors in the State of New York."

[4] "Mr. Caldecott is generally allowed to have been peculiarly conversant with this branch of the law." Bridgman Leg. Bib. 50.

[5] Vol. 1 is by Nathaniel Bennett, with notes and an appendix by R. A. Wilson; vols. 2–4 are by H. P. Hepburn; 5, by Wm. Gouverneur Morris; 6–8, by H. Toler Booraem; 9–12, by Harvey Lee; 13–15, by John B. Harmon; 16–19, by David T. Bagley; 20–22, by Curtis J. Hillyer; 23–32, by Charles A. Tuttle.

[6] These are not general reports, but, as the title-page indicates, "reports of special cases touching several customs and liberties of the city of London; whereunto is annexed divers ancient customs and usages of the said city of London, never before in print." The reputation of these reports is good, but there is little occasion for their use in the United States. The more common abbreviation in England, I think, is *Cal.;* but, with us, it would conflict with *Cal.* for California. The name is sometimes spelled with a final *e*, Calthrope.

Campbell's Nisi Prius Reports; *Camp.* (or *Campb.*); Eng.; 4 vols.; 1807–1816.

Carolina Law Repository; *Car. Law Repos.* (or *Car. L. R.*); N.C.; 2 vols.; 1813–1816.[1]

Carpmael on Patents; *Carp. Pat.;* 1 vol.; Eng. Con.

Carpmael's Patent Cases.; *Carp. Pat. Cas.;* Eng.; 2 vols.; [selected from other books of reports.]

Carrington's Supplement to the Treatises on Criminal Law; *Car. Crim. Law;* 1 vol.; Eng. 3d ed. 1828.[2]

Carrington & Kirwan's Nisi Prius Reports; *Car. & K.* (or *C. & K.*); Eng.; 3 vols.; 1843–1853.[3]

Carrington & Marshman's Nisi Prius Reports; *Car. & M.* (or *C. & M.*); Eng.; 1 vol.; 1841, 1842.

Carrington & Payne's Nisi Prius Reports; *Car. & P.* (or *C. & P.*); Eng.; 9 vols.; 1823–1841.

* Carrow & Oliver's Reports. Same as 3 *Railway & Canal Cases.*

* Carrow, Oliver, & Beavan's Reports. Same as 4 *Railway & Canal Cases.*

* Carrow, Hamerton, & Allen's Reports. Same as 1 and 2 *New Sessions Cases.*

* Carter's Reports. Same as 1 and 2 *Indiana.*[4]

Carter's Reports; *Cart.*; Eng. C.P.; 1 vol.; 1664–1676.[5]

Carthew's Reports; *Carth.;* Eng. K.B.; 1 vol.; 1686–1701.[6]

Cary's Reports; *Cary;* Eng. Ch.; 1 vol.; 1557–1604.[7]

[1] This is, substantially, a book of reports; or, at least, its chief value consists in its reported cases. According to the title-page, it contains "biographical sketches of eminent judges, opinions of American and foreign jurists, and reported cases adjudged in the Supreme Court of North Carolina."

[2] The paging of the editions differs, and so every citation should mention the edition.

[3] The third volume is unfinished, and, I suppose, will always remain so; two parts only having been published.

[4] We see these sometimes cited as Carter's Reports, or *Cart. Ind.* But the better style, which is the customary one in Indiana, is to cite 1 and 2 *Ind.*

[5] "This is but an inaccurate volume. When it was cited before Lord Holt, he is reported to have said that 'he did not know that Carter, nor would he allow that report for any authority;' and, though Lord Mansfield once relied on a report of Carter's as to what C. J. Bridgman had said, yet, by reference since to Bridgman's own MSS., there appears to be nothing said by the C. J. of the sort attributed to him by Carter." Wallace Reporters, 3d ed. 209, 210. Of course, under these circumstances, there has never been but one edition of this book; it is in folio, published in 1688.

[6] Opinions are not quite uniform as to the merits of this volume; but, on the whole, it may be deemed to stand respectably well. And see Wallace Reporters, 3d ed. 246.

[7] Cary was a master in chancery; and this volume of his consists, according to

* Cases B.R. Same as 12 *Modern*.

Cases in Chancery; *Cas. Ch.* (or *Ch. Cas.*); Eng.; 3 parts; 1660–1688.[1]

* Cases in Law and Equity; *Cas. L. Eq.* Same as 10 *Modern*.[2]

* Cases in the Ecclesiastical and Maritime Courts. Same as *Notes of Cases*.

* Cases of Practice. Same as *Cooke* [George].

Cases of Practice; *Cas. Pract.* (or *Pract. Cas.*); Eng. K.B.; 1 vol.; 1603–1775.[3]

Cases of Settlement; *Cas. Set.*; Eng. K.B.; 1 vol.; 1710–1720.[4]

the title-page, of "Reports of Causes in Chancery; collected, in anno 1601, out of the labors of Master William Lambert," another master in chancery. The chancery cases of so early a date as these are of but little practical use now, however well they may be reported; because the equity department of our law has, since then, made so great progress as almost to lose its identity. This little book is of as good repute as could be expected under the circumstances. "Two editions, one printed in 1650, the other in 1665; are both alike, except in the paging, which is different. A third edition was printed in 1820. The last two — the only ones which I have seen," — says Mr. Wallace, — "are in 16mo." Wallace Reporters, 3d ed. 287. The copy of this book belonging to the Social Law Library, Boston, is of the first edition. For this reason, knowing that the early selections of English reports for this library were generally made with care and with skill, and because I see no notice of editorial improvements, I presume it to be at least as good as either of the subsequent editions.

[1] The three parts of this book are usually bound in one volume. The third has the following title, distinguishing it from the rest: "Select Cases in the High Court of Chancery, solemnly argued and decreed by the late Lord Chancellor, with the assistance of the Judges." This third part, therefore, is sometimes cited as a separate book, under the name of "Select Cases in Chancery," or abbreviated, "*S. C. C.*" But this should not be confounded with a book properly known as "Select Cases in Chancery," covering the period from 1724 to 1733. The first two parts are not of high repute; the third stands somewhat better, but not in the first rank of reports. The English editions are in folio. There is an American edition, in octavo, "which seems to be printed from the 2d edition of the 1st and 3d parts, and the 1st edition of the 2d part. It is greatly to be regretted that all the notes in the English edition — some of them very good — do not appear in this volume, of so much more acceptable form than the old folio." Wallace Reporters, 3d ed. 298. The reader should not confound this book with the one cited as "*Reports* in Chancery;" or with the "Choice Cases in Chancery."

[2] It should be noticed, also, that 8 and 9 Modern were sometimes known as "*Modern* Cases in Law and Equity."

[3] "The cases are merely selected from other books, and are arranged methodically, under different heads." Wallace Reporters, 3d ed. 167.

[4] This volume, like some other of the books of reports by anonymous authors, has been variously named. Its title is: "Cases and Resolutions of Cases adjudged in the Court of King's Bench, concerning Settlements and Removals, from the first year of George I. to the present time." Bridgman mentions it under the short title of "Cases in B.R. temp. Holt," and says: "By this title these reports are cited, though improperly." He observes, that "there is another book called *Reports temp.*

† Cases tempore Finch. See *Reports tempore Finch.*

Cases tempore Hardwicke; *Cas. temp. Hardw.;* Eng. K.B.; 1 vol.; 1733–1737.[1]

† Cases tempore Holt. Same as *Holt's Reports.*

* Cases tempore Macclesfield. Same as 10 *Modern.*

Cases tempore Talbot; *Cas. temp. Talbot;* 1 vol.; 1734–1738.[2]

* Cases tempore Will. III. Same as 12 *Modern.*

Cases with Opinions; *Cas. with Op.* (or *Cas. and Op.*); 2 vols.; Eng.[3]

Casey's Pennsylvania State Reports; *Casey* (or 25–36 *Pa. State*); Pa; 12 vols.; 1855–1860. See post, *Pennsylvania State.*

† Chamber Reports. Same as *Upper Canada Chamber.*

Holt," referring to the book which is now cited simply by the name Holt. See Bridgman Leg. Bib. 54.

[1] The standard edition of this work, to which all references should be made, is in octavo, published in London in 1815, "corrected, with notes and references, &c., by Thomas Lee." Mr. Vernon, in his Preface to the second edition of "Andrews's Reports" (A.D. 1791), after mentioning that these Cases temp. Hardwicke "are sometimes erroneously referred to as being Lord *Annaly's*," says: "I have had some curiosity in inquiring into the manner in which these Cases have been introduced to the public. By whom they were taken or compiled, I have not been able to discover. I can trace them no farther back than to the hands of the late Wm. Harward, Esq., Barrister at Law, to whom they were given by some person whose name I have not learned. About the year 1768, Mr. Harward gave them to Mrs. Elizabeth Lynch, bookseller in Dublin, and Lord Annaly, to whom Harward had given a copy of the cases, gave her an index which he had formed for his own use. From these materials, not prepared for the press, was published the Dublin edition, which bears date A.D. 1769. Before this edition made its appearance, Mrs. Lynch sent the copy to London and sold it to a bookseller there, who had it revised and prepared for the press, with the addition of many references." An examination of the title-page, however, shows that it bears the date of 1770, a year later. The Dublin and London editions do not agree in their paging. The standard edition by Mr. Lee, mentioned above, preserves the paging of the preceding London edition, from which it was printed. A reference, therefore, to the book, not specifying the edition, must be understood as made to one or the other of these two London impressions. This book of reports, in its present revised and improved form, possesses, it seems to me, as much of merit as could possibly be expected in the posthumous work of an old and anonymous reporter. Indeed, I have often found references to this volume to be of great service. And this, I believe, represents about the general standing of the book. See Wallace Reporters, 3d ed. 271.

[2] "Lord Talbot presided in Chancery but for a short time; having been taken from the world in the very vigor of his age. The . . . Cases temp. Talbot comprise, I believe, all his decisions. The first 217 pages are by Mr. Alexander Forrester, a practitioner of repute at the equity bar. . . . This book is sometimes cited as Forrester." Wallace Reporters, 3d ed. 317, 318. This volume of reports is in excellent repute.

[3] This is not a book of reports. The title is "Cases with Opinions of Eminent Counsel, in Matters of Law, Equity, and Conveyancing. London, 1791."

† Chancery Cases. Same as *Cases in Chancery.*

† Chancery Precedents [a book of reports]. Same as *Precedents in Chancery.*

† Chancery Reports. Same as *Reports in Chancery.*

Chancery Sentinel [a periodical]; *Ch. Sent.;* N.Y. Ch.; 1841–1847.

Chandler's American Criminal Trials; *Chand. Am. Crim. Trials;* 2 vols.[1]

* Chandler's Reports. Same as 20 *New Hampshire.*

Chandler's Reports; *Chand.;* Wis.; 4 vols.; 1849–1852.

Charlton's Reports [Robert M.]; *R. M. Charl.* (or *R. M. Charlt.*); Ga.; 1 vol.; 1811–1837.

Charlton's Reports [Thomas U. P.]; *T. U. P. Charl.* (or *T. U. P. Charlt.*); Ga.; 1 vol.; 1805–1811.

Cheves's Cases at Law; *Cheves* (or *Chev.*); S.C.; 1 vol.; 1839, 1840.

Cheves's Cases in Chancery; *Cheves Ch.* (or *Chev. Ch.*); S.C.; 1 vol.; 1839, 1840.

Chipman on Contracts for the Payment of Specific Articles; *Chip. Con.;* 1 vol.; Am.[2]

Chipman's Reports [Daniel]; *D. Chip.;* Vt.; 2 vols.; 1789–1824.

Chipman's Reports [Nathaniel]; Vt.; 1 vol.; 1789–1791.[3]

Chitty's Criminal Law; *Chit. Crim. Law;* 3 vols.; Eng. and Am. notes. Con.[4]

[1] This work, though by a very competent lawyer, is rather popular than legal in its character.

[2] This is a small work, of considerable interest, on an important subject, not elsewhere much discussed. In 1852, a supplement was added to the work by D. B. Eaton, Esq., of the New York bar. A book of this sort ought to command much greater attention than the present effort to supply a great want seems to have done.

[3] This is a thin 12mo book, but it has a great title, as follows: "Reports and Dissertations, in two parts: Part 1, Reports of Cases in the Supreme Court of Vermont, in 1789, 1790, 1791. Part 2, Dissertations on the Statute adopting the Common Law of England, the Statute of Conveyances, the Statute of Offsets, and on the Negotiability of Notes. With an appendix, containing Forms of Special Pleadings in several cases; Forms of Recognizances; of Justice Records; and of Warrants of Commitment. Rutland, 1793." Though the work does not possess much practical interest at the present day, it has become very scarce.

[4] See 1 Bishop Crim. Proced. § 1085. I do not purpose to enumerate here all the books which bear the name of Chitty. They are vast, both in bulk and in number. Dr. Allibone has done it very well in his "Dictionary of Authors," vol. i. *Chitty.* He mentions five Chittys, all legal authors, and all modern. I *think* they are all of one family, but I am not particularly informed. The most famous among them is Joseph Chitty, who was born in 1776, and died in 1841. He wrote, among other subjects, on the Law of Bills, on Pleading, on Commercial Law, on the Law of Nations, on the Criminal Law, on Practice, on Medical Jurisprudence, — indeed, on almost every thing. Then, Joseph Chitty, Jr., has written Precedents of Pleadings, written on Bills also, on the Office of Constable, on the Law of Con-

Chitty's Practice Cases; *Chit.;* Eng. K.B.; 2 vols.; 1782–1819.

Choice Cases in Chancery; *Choice Cas. Ch.* (or *Cho. Cas. Ch.*); Eng.; 1 vol.; 1557–1606.[1]

City Hall Recorder [New York, by Rogers]; *City H. Rec.;* N.Y.; Jury Cases; 6 vols.; 1816–1821.

Clancy on Husband and Wife; *Clancy Hus. & W.;* 1 vol.; Eng. and Am. reprint.

* Clark's Reports. Same as 3–11 *House of Lords Cases.*

Clark & Finnelly's Reports; *Cl. & F.* (or *C. & F.*); Eng. H. of L.; 12 vols.; 1831–1846.

* Clark & Finnelly's Reports, New Series. Same as 1 and 2 *House of Lords Cases.*

Clarke's Reports; *Clarke;* N.Y.; Ch. 8th circuit; 1 vol.; 1839–1841.

* Clarke's Reports. Same as 1–8 *Iowa.*

Clayton's Reports; *Clayton* (or †*Clay.*); Eng. Assizes at York; 1 vol.; 1631–1650.[2]

* Cobb's Reports. Same as 6–20 *Georgia.*

* Cobbett's State Trials. Same as *Howell.*

* Cocke's Reports. Same as 16–18 *Alabama.*

Code Reporter; *Code R.;* N.Y.; 3 vols.; 1848–1851.[3]

tracts not under Seal, and on some other subjects. Edward Chitty, Henry Chitty, and Thomas Chitty have, in like manner, contributed their respective parts. Perhaps the most famous of the Chitty works is that of the elder Joseph on Pleading. It really did much to methodize and compact the law on that subject. But, while most of these works are respectable, and some of them may be pronounced quite good, none of them can possibly go down to future generations, ever-burning lights of the law, with those of Blackstone and of Coke.

[1] This work should be distinguished from "Cases in Chancery," "Reports in Chancery," and "Select Cases in Chancery." The fuller title of the book is, "The Practice of the High Court of Chancery, with the Nature of the several Offices belonging to that Court, and the Reports of many Cases wherein relief hath been there had, and where denyed. London, 1672." The reports constitute the last seventy-five pages of the volume, which is a 16mo. They are short, but well esteemed, yet of a date too early to be of much practical value at the present day. See ante, *Cary*, note. Mr. Wallace observes: "Many cases in the Choice Cases are found in a form nearly identical in Cary; both taken, it is probable, from the same source of Master Lambert's MSS." Wallace Reporters, 3d ed. 292.

[2] The name of Clayton does not appear upon the title-page, but at the end of the Epistle Dedicatory. Yet I think the reports have always, or nearly always, been cited under the reporter's name. It is a small 12mo volume of only 158 pages, not often referred to in modern times; and, I think, not adapted in itself to be now of much use in this country. It consists of short notes of points ruled by single judges. The only English edition is dated 1651; there is a Dublin reprint of 1741. *Clay.*, for the abbreviation, is objectionable. Ante, § 507.

[3] This was a New York monthly law journal, "containing reports of decisions on the Code, articles on legal topics, and miscellaneous information concerning legislation, law, and lawyers."

Code Reports; *Code R.* N.S.;[1] N.Y.; 1 vol.; 1852.
Coke's Entries; *Co. Ent.;* 1 vol. fol.; 1st ed. 1614, 2d ed. 1671.[2]
Coke's Reports; *Co.* (or *Rep.*); Eng.; 13 parts; 1572–1615.[3]
Coke's Institutes; *Co. Lit.* for the 1st Institute; for the rest 2, 3, 4 *Inst.;* 4 parts, usually bound, at the present day, in 7 vols.[4]

[1] The N.S. (for New Series) is a mere arbitrary designation, which custom has employed to distinguish this work from the Code Reporter.

[2] This is a book of precedents, "containing," as the title-page states, "perfect and approved precedents in all matters and proceedings concerning the practick part of the laws of England, in actions real, personal, and mixt, and in appeals." There are several old books of entries, as they are called, all useful to a certain extent. They were formerly very much resorted to, as showing the usage of the courts, which, in a certain sense, was and is deemed to be the law. In these later times, the student will generally derive more valuable information from the perusal of the modern precedents, than the old ones. And see ante, § 408–405. I have given above what I suppose to be the better modern abbreviated name of this book; but Bridgman observes: "These entries are quoted by the title of *New Entries*, and *New Book of Entries*, by Selden, Rolle, and others, in contradistinction to *Rastell* and the other books; in the same manner as Rastell had before obtained that distinction, and is occasionally quoted by older writers, with respect to the Liber Intrationum," &c. Bridgman Leg. Bib. 76.

[3] Concerning Lord Coke's works generally see ante, § 202, 280–291; concerning his reports, ante, § 150, 153, 154, 290, 291, 414. "Lord Coke's Reports have been uniformly received by our courts with the utmost deference; and, as a mark of distinguished eminence, they are frequently cited as 1, 2, 3, &c., *Rep.*, without mentioning the author's name. And in his own writings they are usually described as *Lib.* 1, 2, 3, &c." Bridgman Leg. Bib. 58. These reports, like all the other old reports, where two or more "parts" (as they are called,) with disconnected pagings are bound in one volume, are to be cited by the part, and not by the volume. Thus, 5 Co. 15, means the 15th page of the fifth *part*, and not of the fifth volume. The last and best edition is by Thomas and Fraser, published at London in 1826. This is in six volumes. The next preceding edition, by Wilson, published in 1777, is in seven volumes. But the original paging, and the original division into parts, being preserved in all, a general reference to the book, not specifying the edition, can be traced in one edition as well as in another.

[4] See the last note. And see ante, § 285. As to the first Institute, commonly called Coke upon Littleton, see ante, § 283–289, 297, 385, 414, 513. The four parts of the Institutes consist of the following:—

Part 1. *Coke upon Littleton.* This is never cited as 1 *Inst.*, but always as *Co. Lit.*, or *Co. Litt.* The volume is not mentioned; because the references are to be made to the page, and the paging runs on to the end of the work. There are two volumes of Coke's matter, including Littleton's text, and the third volume is occupied with Hargrave and Butler's notes; or, in the latest editions, these notes are inserted in the same two volumes with the rest. When the reference is to Littleton's part of the work, and not to what Coke wrote, it is not made to the page, but the number of the section is given: thus, — *Lit.* § 68; or, as perhaps it is more frequently put, *Litt.* § 68.

Part 2. *Exposition of many ancient and other Statutes.* This part is in two volumes, but the paging runs through as in the case of Co. Lit. It is sometimes,

* Coke's Reports [George]; **Co. G.* Same as *Cooke.*[1]

Cole on Criminal Informations; *Cole Inf.;* 1 vol.; Eng. and Am. reprint.

Coleman's Cases; *Col. Cas.;* N.Y.; 1 vol.; 1791–1800.[2]

Coleman & Caines's Cases; *Col. & C. Cas.;* N.Y.; 1 vol.; 1791–1805.[3]

Colles's Parliamentary Cases; *Colles* (or *Colles P.C.*); Eng.; 1 vol.; 1697–1709.[4]

Collier on Mines; *Collier Mines;* 1 vol.; Eng. and Am. reprint.

Collinson on Lunacy; *Collinson Lun.;* 2 vols.; Eng.; 1812.

Collyer on Partnership; *Collyer Part.;* 1 vol.; Eng. and Am. notes. Con.[5]

Collyer's Reports; *Collyer* (or *Coll.* or *Colly.*); Eng. Ch.; 2 vols.; 1844–1846.

Comberbach's Reports; *Comb.;* Eng. K.B.; 1 vol.; 1685–1698.[6]

Common Bench Reports; *C.B.;* Eng.; 18 vols.; 1845–1856.[7]

but not very appropriately, cited as *Co. Mag. Car.*, or Coke on Magna Carta; this ancient statute being the most important of all, and the one most voluminously commented upon. The true citation is not *Co. Inst.*, but simply *Inst.;* in this instance, 2 *Inst.*

Part 3. *Concerning High Treason, and other Pleas of the Crown, and Criminal Causes.* This is sometimes cited as *Co. P. C.;* but the usual and correct method is 3 *Inst.* It is in one volume.

Part 4. *Concerning the Jurisdiction of Courts.* This is in one volume also. While the usual and correct citation is 4 *Inst.*, it is sometimes, but less correctly, referred to as *Co. on Courts.*

[1] The names Coke, Cooke, Cook, Croke, &c., appear anciently to have been all one, with different spellings. Even Sir Edward Coke's name, now uniformly spelled *Coke*, was in former times spelled in a great variety of ways; it is so, even in the old law books.

[2] The full title of this book, as given in the first edition, is, "Cases of Practice adjudged in the Supreme Court of the State of New York, together with the rules and orders of the Court, from October Term, 1791, to October Term, 1800." "This was the first volume of reports published in the State. In 1808, a second edition was published, edited by George Caines, in which he added a large number of practice cases decided in the Supreme Court, down to November, 1805; all which, however, are selected from Caines's Reports. . . . The cases are exclusively cases of practice, and reported with great brevity, and they are now almost wholly obsolete." 1 Abbott Dig. Pref. xv. This second edition is sometimes, and perhaps commonly, cited as Coleman & Caines's Cases; abbreviated *Col. & C. Cas.* It is so in Abbott's New York Digest.

[3] This is the second edition of the last-mentioned work. See the last note.

[4] "They appear to be very accurately taken." Bridgman Leg. Bib. 77.

[5] One or more of the American editions differ from the English in paging. The book is generally esteemed to be pretty reliable.

[6] These reports are in very low repute. "A posthumous note-book, published by the author's son; and therefore, perhaps, more pardonable for its worthlessness." Wallace Reporters, 3d ed. 245.

[7] Vols. 1–8, by James Manning, T. C. Granger, and John Scott; vol. 9, by Manning and Scott; the rest by Scott.

Common Bench Reports, New Series; *C.B.* N.S.; Eng.; 10 vols.; 1856–1861.[1]

Common Law Reports; *Com. Law.;* Eng. all the Sup. Cts. of Com. Law; 3 vols.; 1853–1855.[2]

* Common Pleas Reports. Same as *Upper Canada Common Pleas.*

Comstock's Reports; *Comst.* (or *Coms.*); N.Y.; 4 vols.; 1847–1851.[3]

Comyns's Digest; *Com. Dig.;* Eng.[4]

[1] These volumes are all by Scott; but neither this series nor the other should be cited by the reporters' names.

[2] This was an opposition series of reports, which failed of success. It is but little known. There is a Philadelphia reprint of English reports, called the "English Common Law Reports;" and this series is sometimes cited in American books as *Com. Law*, or *Eng. Com. Law.* It should, properly, not be cited at all; but the reference should be made to each book by its English name and page, which are, as they ought to be, preserved in the reprint.

[3] These are the first series of reports of the present Court of Appeals. Next come Selden's, then Kernan's. Smith follows; but his reports, as well as those of Tiffany, who succeeds him, are called "New York Reports." The first volume of Smith was numbered 15, which was made up by counting in the preceding reports of this court. Hence Comstock, Selden, and Kernan are now sometimes cited as New York; but the method is inconvenient, and it is not generally followed, certainly out of the State. And see ante, § 560, *Arkansas*, note.

[4] See ante, § 202, 222. This is one of the famous old books, which seem destined to something like an immortality. Bridgman says, this work "was originally published by Lord Chief Baron Sir John Comyns, in 1762, 1764, '65, '66, and '67, under alphabetical heads, with tables of Principal Matters, in five volumes folio; and, in 1776, a continuation of the more modern cases was published by another hand. In 1781, a second edition was published, with the continuation included under one alphabet, in five volumes folio. In 1792, a third edition was published with additions by Stewart Kyd, Esq., in six volumes, royal octavo. And, in 1805, a fourth edition was printed, considerably enlarged, and continued down to the present time, by Samuel Rose, Esq., in six volumes, royal octavo." Bridgman Leg. Bib. 78, 79. A fifth edition, by Anthony Hammond, was published, London, 1822, in eight volumes octavo. This, I believe, is the last edition issued in England. There is a New York reprint, of 1826, "with American Notes, by Thomas Day." It is in eight volumes octavo. Mr. Day edited several books, all, I believe, in a very competent manner. The above enumeration of editions does not include the Dublin reprints, of which there are, I know not how many. "This Digest," it has been said, "being founded on an entire new and comprehensive system of arrangement, and framed upon an accurate, profound, and scientific distribution of the several parts of our jurisprudence, is esteemed the most perfect model of an abridgment, or system of our law. The method, however, of digesting the substance of the several cases, being very close and concise, the use of this work is more particularly advantageous to the experienced barrister, in furnishing a ready reference to the cases as recorded at large in the books of reports and other authorities." Bridgman Leg. Bib. 79. The title *Pleader*, in this work, has been particularly admired.

Comyns's Reports; *Comyns* (or *Com.*); Eng.; 2 vols.; 1695–1741.[1]

Conference Reports; *Conference* (or *Conf.*); N.C.; 1 vol.; 1800–1804.[2]

Conkling's U.S. Courts Practice; *Conkling Pract.*; 1 vol.; Am. Con.[3]

Conkling's Admiralty Jurisdiction; *Conkling Adm. Jurisd.*; 2 vols.; Am. Con.[4]

Connecticut Reports; *Conn.*; 1814 to the present time.[5]

Connor & Lawson's Reports; *Connor & Lawson* (or *Con. & L.*); Eng. Ch.; 2 vols.; 1841–1843.

Conover's Reports. Same as 16–20 *Wisconsin.*

* Constitutional Reports. Same as *Treadway.*[6]

* Constitutional Reports, New Series. Same as *Mill.*[7]

Cook & Alcock's Reports; *Cook & A.* (or *Coo. & Al.*); Irish K.B. & Ex. Ch.; 1 vol.; 1833, 1834.[8]

Cooke's Practice Cases [Geo.]; *Cooke* (or † *Co. G.*); Eng. C.P.; 1 vol.; 1706–1747.[9]

Cooke's Reports; *Cooke, Tenn.*; Tenn.; 1 vol.; 1811–1814.

* Cooley's Reports. Same as 5–12 *Michigan.*

Cooper's Reports [George]; *Cooper* (or *Cooper G.* or *Coop.*); Eng. Ch.; 1 vol.; 1815.

Cooper's Reports tempore Brougham [C. P.]; *Cooper temp. Brough.* (or *Coop. temp. Brough.*); Eng. Ch.; 1 vol.; 1833, 1834.[10]

Cooper's Reports tempore Cottenham [C. P.]; *Cooper temp. Cotten.*; Eng. Ch.; 2 vols.; 1834–1847.[11]

[1] By the same author as the Digest. The publication was posthumous, but it has been well received.

[2] These reports are by Cameron & Norwood. Out of the State, we sometimes see them cited under the names of their reporters; but in the subsequent reports of the State they are cited as *Conference.* This, therefore, we should accept as the true method. And see ante, § 500.

[3] The paging of the different editions differs.

[4] The first edition of this work was in one volume. In the second, it is paged anew.

[5] Vols. 1–21, by Thomas Day; 22–24, by William N. Matson; 25–32, by John Hooker.

[6] See ante, § 500. Besides the correct way of citing these reports, the following may be found in different books: *Con. Rep.*, *Const. Rep.*, *Const.*, *Con. Rep. Tread. ed.* The last is the least objectionable of these methods.

[7] See the last note. The following more or less incorrect methods of citing this series may be found in the books: *Con. Rep.*, *Const.* N.S., *Rep. Con. Ct.*, *Mill Con.*

[8] All ever published of these reports is a single part of an unfinished volume.

[9] This old book is in good repute.

[10] The title of this book is, "Select Cases decided by Lord Brougham in the Court of Chancery, in the years 1833 and 1834. London. 1835."

[11] The title of these reports is, "Reports of Cases in Chancery decided by Lord Cottenham, with which are interspersed some miscellaneous Cases and Dicta, and

Cooper's Reports of Points of Practice in Chancery [C. P.]; *Cooper Pract. Cas.* (or *C. P. C.*); Eng. Ch.; 1 vol.; 1837, 1838.[1]

Cooper's Institutes of Justinian, with notes; *Cooper Inst.;* 1 vol.; Am. Con.

Coote's Admiralty Practice; *Coote Adm. Pract.;* 1 vol.; Eng. 1860.

Coote's Ecclesiastical Practice; *Coote Ec. Pract.;* 1 vol.; Eng. 1847.

Coote on Mortgages; *Coote Mort.;* 1 vol.; Eng. and Am. reprint.

Cord on Married Women; *Cord Mar. Women;* 1 vol.; Am.1861.

Court of Session Cases. See *Scotch Court of Session Cases.*

Cowell's Law Dictionary; *Cowell Law Dict.;* Eng.[2]

Cowen's Reports; *Cow.;* N.Y.; 9 vols.; 1823–1829.

Cowper's Reports; *Cowp.;* Eng. K.B.; 1 vol.; 1774–1778.[3]

Cox's Reports; *Cox;* Eng. Ch.; 2 vols.; 1783–1796.

Cox's Criminal Cases in all the Courts of England and Ireland; *Cox C.C.;* 1843 to the present time.[4]

Coxe's Reports; *Coxe, N.J.* (or *Coxe*); N.J., 1 vol.; 1790–1795.

Crabbe's Reports; *Crabbe;* U.S. East. Dist. Pa.; 1 vol.; 1836–1846.

various Notes." The second volume was never completed, only two parts of it having been published.

[1] The title of this volume is: "Reports of some Cases adjudged in the Courts of the Lord Chancellor, Master of the Rolls, and Vice-Chancellor, in the years 1837 and 1838, with notes and an appendix."

[2] The title of this book is, "A Law Dictionary; or, the Interpreter of the Words and Terms used either in the Common or Statute Laws of Great Britain, and in Tenures and Jocular Customs." It is known, perhaps more commonly, under the short name of "Cowell's Interpreter." It "was thought to attack the principles of the common law, and was publicly burned." Allibone Dict. Authors, tit. *Cowell, John.* The first edition was published in 1607. There were afterward editions in 1672, 1701, 1709, and 1727. I do not know whether there have been others. The book, after recovering from its early blow, met with a good deal of favor; and it is now deemed quite valuable for so old a work. Chancellor Kent says of it: "Cowell's Interpreter is frequently cited by the English antiquarians, and Mr. Selden makes much use of it in his notes to Fortescue. It is one of the authorities used by Jacob in compiling his Law Dictionary; but the first edition, under James I., met with the singular fate of being suppressed by a proclamation of the king, at the instance of the House of Commons, for containing the heretical and monstrous doctrine that the king was an absolute monarch, and above the law, which he might alter or suspend at his pleasure." 1 Kent Com. 508, note.

[3] We not unfrequently see this book bound in two volumes; but the paging extends through. These are excellent reports, of great authority.

[4] Cox is the general editor, but there are under him reporters assigned to particular localities. The series contains nisi prius cases, as well as cases decided by the judges of Criminal Appeal. It does not belong to what are sometimes termed the regular reports, yet it is often referred to, and a pretty good book, but dear in price. I judge that its circulation is not extensive. At the time of the present writing in the beginning of 1868, there have been received in this country nine complete volumes, and seven parts of volume ten.

Craig & Phillips's Reports; *Craig & P.* (or *Cr. & Ph.*); Eng. Ch.; 1 vol.; 1840, 1841.

Craigie, Stewart, & Paton's Reports; *Craigie & S.* (or *C. S.*); Scotch Ap. H. of L.; 6 vols.; 1726–1821.[1]

Cranch's Reports; *Cranch;* U.S. Sup. Court; 9 vols.; 1800–1815.

Cranch's Circuit Court Reports; *Cranch C.C.;* U.S. Dist. of Columbia; 6 vols.; 1801–1841.

Crawford & Dix's Circuit Court Reports; *Crawf. & Dix C.C.;* Irish; 3 vols.; 1839–1846.

Crawford & Dix's Abridged Notes of Cases; *Crawf. & Dix Abr. Cas.;* Irish, Law & Eq.; 1 vol.; 1837, 1838.

* Critchfield's Reports. Same as 5–16 *Ohio State.*

Croke's Reports; *Cro. Car., Cro. Eliz., Cro. Jac.*; Eng. K.B. & C.P.; 1582–1641.[2]

* Croke's Reports. Same as *Keilway.*[3]

* Crompton's Reports. Same as *Star Chamber Cases.*

Crompton & Jervis's Reports; *Cromp. & J.;* Eng. Ex.; 2 vols.; 1830–1832.

Crompton & Meeson's Reports; *Cromp. & M.;* Eng. Ex.; 2 vols.; 1832–1834.

Crompton, Meeson, & Roscoe's Reports; *Cromp. M. & R.;* Eng. Ex.; 2 vols.; 1834, 1835.

Cruise's Digest; *Cruise Dig.;* 7 vols.; Eng. and Am. notes. Con.[4]

[1] The early portions of vol. 1 were by Craigie & Stewart alone, though this fact does not appear upon the title-page, according to which the whole of the first volume purports to be by the three reporters. The last five volumes of the series were by Paton alone. Still, as the series was commenced by Cragie & Stewart, it is more commonly known, in Scotland, I think, simply as Craigie & Stewart's Reports; in accordance with what would seem to be a custom there of calling a series by the names of those who began it. Yet perhaps the last five volumes may be sometimes cited under the name of Paton, who, as to them, was really the sole reporter. This series is a recent compilation and publication of old decisions.

[2] See ante, § 498. "The reports of Sir George Croke consist of nearly a complete series of determinations, occasionally in both the common law courts, from 23 Eliz, to 16 Car. I., and may properly be considered as a continuation of Dyer. They are generally very concise, perspicuous, and accurate, and have obtained the character of great authenticity." Bridgman Leg. Bib. 87.

[3] Ante, § 498. There are also two single cases, one in the Ecclesiastical Court, and the other in the High Court of Admiralty, reported by still another Croke, — namely, Dr. Alexander Croke (Bridgman Leg. Bib. 89), — which should not be confounded with the other reports.

[4] See ante, § 292, 293. This work was originally in seven volumes, and so is the fourth and last English edition, dated 1835. There have been five American editions. Some of the editions, English and American, have been in a less number of volumes. Mr. Greenleaf's is bound in three volumes.

Cunningham's Law Dictionary; *Cun. Law Dict.*; 2 vols.; Eng.; 3d ed.; 1782.[1]

Cunningham's Reports; *Cun.*; Eng. K.B.; 1 vol.; 1734–1736.[2]

* Curry's Reports. Same as 6–19 *Louisiana.*

Curteis's Ecclesiastical Reports; *Curt. Ec.*; Eng.; 3 vols.; 1834–1844.

Curtis's Reports; *Curt. C.C.*; U.S. 1st Circuit; 2 vols.; 1851–1856.

* Curtis's Supreme Court Reports.[3]

Curtis on Patents; *Curt. Pat.*; 1 vol.; Am. Con.

Cushing's Reports; *Cush.*; Mass.; 12 vols.; 1848–1854.

* Cushman's Reports. Same as 23–29 *Mississippi.*

§ 565. C. — Further Abbreviations.[4]

C. Codex Juris Civilis, Chancellor, &c.

C.B. Chief Baron, Common Bench, &c.

C.C. Chancery Cases, Crown Cases, Circuit Court, &c.

C.C.A. County Court Appeals.

C.C.R. Crown Cases Reserved.

C.J. Chief Justice.

C.S. Court of Session.

C.P. Common Pleas.

* *Com.* This abbreviation alone is sometimes used to denote Blackstone's Commentaries. It should be *Bl. Com.*

§ 566. D. — Principal Collection.

Dalison's Reports; *Dalison* (or *Dal.*); Eng. C.P.; (1 vol. bound with the 1 vol. of Benloe); 1486–1580.[5]

[1] The two preceding editions were in 1771 and 1764.

[2] I am not aware that these reports have a very decided reputation, one way or the other. Mr. Wallace states that several of the cases are printed almost verbatim in *Cas. temp. Hardw.*, "with more or less variation in Ridgeway, and the part of 7th Modern which contains cases in the King's Bench." Wallace Reporters, 3d ed. 271.

[3] This work, in twenty-two volumes, is a condensation of the reports of the Supreme Court of the United States, down to the time of its publication. It is not, however, to be cited as a distinct work; but all references to the cases in it should be to the name and page of the original report.

[4] The abbreviations noted under this section are not all in good taste; but the circumstances in which a writer may be called to use them differ so much that what might be good in one place would not always be in another. I have, therefore, placed no marks of distinction among them, except in a single instance.

[5] This work constitutes the second part of the book sometimes known as Ben-

Dallas's Reports; *Dall.;* U.S. & Pa.; 4 vols.; 1754–1806.
Dalton's Justice; *Dalt. Just.;* 1 vol.; Eng.[1]
Dalton's Sheriff; *Dalt. Sheriff;* 1 vol.; Eng.[2]
Dana's Reports; *Dana;* Ky.; 9 vols.; 1833–1840.
Dane's Abridgment; *Dane Abr.;* 9 vols.; Am.; 1823–1829.[3]
Daniell's Chancery Practice; *Dan. Ch. Pract.;* 3 vols.; Eng. and Am. additions and notes. Con.
Daniell's Reports; *Dan.;* Eng. Exch. Eq.; 1 vol.; 1817–1820.
D'Anvers's Abridgment; *D'Anvers Abr.;* 3 vols.; Eng.[4]
* Dasent's Reports. Same as 3 *Common Law.*
Daveis's Reports; *Daveis D.C.;* U.S. Dist. of Me.; 1 vol.; 1839–1849.

loe & Dalison's Reports; more properly cited under the name of Dalison alone. See ante, § 562, *Benloe*, note. The reports of Dalison, as preserved in this, the last and most authentic collection, have, on the whole, a pretty high standing, especially considering that the publication is posthumous, and probably not every thing in the collection came from the person who is evidently the principal reporter. And see Wallace Reporters, 3d ed. 81 et seq.

[1] This is one of the very early of the successful works written for the instruction of justices of the peace. On questions of the criminal law, it is almost an authority now. Yet it is a book of the past, and has but little living interest at the present day. "First edition, printed for the society of the stationers, 1618; the second, 1619; the third, 1622; 1626; 1629, printed in his lifetime; 1630; 1635; 1643; 1697. [The last edition, I think, is 1805.] The first has an errata of above thirty lines, the second about five lines, the third has no errata printed. The second and third are paged alike, although different editions." Worrell Bib. 89.

[2] This is a work similar to the last, by the same author. It is perhaps not quite so celebrated, and it was not printed in so many editions. I think the last edition is 1782.

[3] The full title of this work is, "A General Abridgment and Digest of American Law, with occasional Notes and Comments." It was published at Boston. There is an Appendix, in one volume, published in 1829. Mr. Dane died in 1834, aged eighty-two years. As a man, he was greatly respected; and, as a lawyer, his standing was very high. This abridgment was much used at first, and considerably praised. It is valuable now for its occasional important comments, and for its notes of some judicial decisions not elsewhere reported. The arrangement of the work was not good, and the author "pitchforked" into it much matter from the old books, not adapted to be used in this way. If he had let those labors of other men stand where he found them, and confined himself more to original matter, taking care also to preserve a lucid arrangement, he would have left a much more enduring monument to his toil, and to his real greatness. He is known, among other things, as the founder of the "Dane professorship" in Harvard Law School.

[4] "Knightly D'Anvers, Esq., published a 'General Abridgment of the Common Law, alphabetically digested under proper titles,' as far as the head 'Extinguishment' (in three volumes folio, 1725, 1732, 1737); which Abridgment, as far as it goes, is a translation of Lord Rolle's, with the addition of some more modern books of reports, &c., the latter being printed in the Roman letter by way of distinction." Bridgman Leg. Bib. 94.

Davies's [or Davis's] Reports; *Davies* (or *Dav.*); Irish K.B.; 1 vol.; 1604–1612.[1]

Davis's Collection of Patent Cases; *Davis Pat. Cas.;* Eng.; 1 vol. Pub. 1816.

Davis's Precedents of Indictments; *Davis Preced.;* 1 vol.; Am.; 1831.[2]

Davison & Merivale's Reports; *Dav. & M.;* Eng. Q.B.; 1 vol.; 1843, 1844.

Day's Reports; *Day;* Conn.; 5 vols.; 1802–1813.[3]

Deacon's Reports of Cases in Bankruptcy; *Deac.;* Eng.; 4 vols.; 1832–1835.

Deacon's Criminal Law; *Deac. Crim. Law;* 2 vols.; Eng.[4]

Deacon's Law and Practice of Bankruptcy; *Deac. Bankr.;* 2 vols.; Eng.; 3d ed. 1863.

Deacon & Chitty's Bankruptcy Reports; *Deac. & C.;* Eng.; 4 vols.; 1832–1835.

Dean on Medical Jurisprudence; *Dean Med. Jurisp.;* 1 vol.; Am.; 1850.

* Deane's Reports. Same as *Deane & Swabey;* also, 24–26 *Vermont.*

Deane & Swabey's Ecclesiastical Reports; *Deane & S.;* Eng.; 1 vol.; 1855–1857.[5]

Dearsly's Crown Cases Reserved; *Dears.;* Eng.; 1 vol.; 1852–1856.[6]

[1] These reports had, at first, to struggle in England against some opposition because they were Irish. But the reporter was a lawyer and judge of great learning, and their standing is now excellent everywhere. By some they are esteemed very highly. And see Wallace Reporters 3d ed. 167, 172. The volume went through three editions in French, folio; but the fourth is in an English translation, octavo. It omits an interesting Preface Dedicatory, which, in the French editions, is in English.

[2] The compiler, who was also author of a work on the "Authority and Duty of Justices of the Peace in Criminal Prosecutions" in Massachusetts, was born in 1778 and died in 1835. For several years he held the office of Solicitor-General of Massachusetts. His Precedents have been a good deal used; but not all of them are accurately drawn, and some have been pronounced insufficient by the courts. Others of them, however, are valuable.

[3] Mr. Day reported, also, vols. 1–21 of the series next following these, cited as the "*Connecticut* Reports;" so that his labors cover twenty-six consecutive volumes.

[4] This work, with a Supplement added by Hindmarch in 1836, constitutes a sort of digest of the criminal law of England down to that date. It has the merit of being truly designated on the title-page, where it is called "a Digest," and not, as many digests like it are, "*a Treatise.*" It is as much a treatise, and as good a one, as great numbers of books which go by the latter name. Yet it is not a work of any enduring value.

[5] The first number, or part, of this volume was prepared by, and originally published under the name of, Deane alone, the rest was by Swabey; but the whole is now known under the joint names of Deane & Swabey.

[6] These reports, like most of the modern English reports, were published in parts; and one hundred and fifty-eight pages of the volume were in fact executed

Dearsly & Bell's Crown Cases Reserved; *Dears. & B.;* Eng.; 1 vol.; 1856–1858.

De Gex's Bankruptcy Cases; *De G. Bankr.* (or *De G.*); Eng.; 1 vol.; 1844–1848.

De Gex, Fisher, & Jones's Chancery Reports; *De G. F. & J. Ch.* (or *De G. F. & J.*); Eng.; 3 vols.; 1859–1862.

De Gex, Fisher, & Jones's Bankruptcy Cases; *De G. F. & J. Bankr.;* Eng.; 1 vol.; 1859–1862.

De Gex & Jones's Chancery Reports; *De G. & J. Ch.* (or *De G. & J.*); Eng.; 4 vols.; 1857–1859.

De Gex & Jones's Bankruptcy Cases; *De G. & J. Bankr.;* Eng.; 1 vol.; 1857–1859.

De Gex, Jones, & Smith's Chancery Reports; *De G. J. & S. Ch.* (or *De G. J. & S.*); Eng.; 3 vols.; 1863.

De Gex, Jones, & Smith's Bankruptcy Cases; *De G. J. & S. Bankr.;* 1 vol.; 1863.[1]

De Gex, Macnaghten, & Gordon's Chancery Reports; *De G. M. & G. Ch.* (or *De G. M. & G.*); Eng.; 8 vols.; 1851–1857.

De Gex, Macnaghten, & Gordon's Bankruptcy Cases; *De G. M. & G. Bankr.;* Eng.; 1 vol.; 1851–1856.[2]

De Gex & Smale's Reports; *De G. & S.;* Eng. Ch.; 5 vols.; 1846–1852.

Denio's Reports; *Denio* (or † *Den.*); N.Y.; 5 vols.; 1845–1848.

Denison's Crown Cases Reserved; *Den. C. C.;* Eng.; 2 vols.; 1844–1852.[3]

Desaussure's Chancery Reports; *Des.;* S.C.; 4 vols.; 1784–1817.

Devereux's Law Reports; *Dev.;* N.C.; 4 vols.; 1826–1834.

Devereux's Equity Reports; *Dev. Eq.;* N.C.; 2 vols.; 1828–1834.

Devereux & Battle's Law Reports; *Dev. & Bat.;* N.C.; 4 vols. in 3; 1834–1839.

Devereux & Battle's Equity Reports; *Dev. & Bat. Eq.;* N.C.; 2 vols.; 1834–1840.

Dickens's Reports; *Dick.;* Eng. Ch.; 2 vols.; 1559–1784.[4]

by the late Mr. Pearce, and a portion of them were published under his name. The earlier pages were therefore formerly cited *Pearce C.C.;* but now the proper way is to cite the whole under the name of Dearsly.

[1] This is an unfinished volume, only one part having been published.

[2] This is an unfinished volume, nine parts only having been published.

[3] A part of the second volume is by Pearce, but the book is not called by his name; the two volumes being cited 1 and 2 *Denison.*

[4] Bridgman says: "From the author's official situation as register of the Court of Chancery for many years, great expectations were formed by the profession from the proposed publication of these reports, *sed parturiunt montes,* &c." Bridgman Leg. Bib. 96. The publication was posthumous. Still, on the whole, these

Dickinson's Guide to the Quarter Sessions; *Dick. Qr. Sess.;* 1 vol.; Eng. Con.[1]

Doctor and Student; *Doct. & Stud.;* 1 vol.; Eng.[2]

Dodson's Admiralty Reports; *Dods.;* Eng.; 2 vols.; 1811–1822.

Douglas's Reports; *Doug.;* Eng. K.B.; 4 vols.; 1778–1785.[3]

Douglass's Reports; *Doug. Mich.;* Mich.; 2 vols.; 1843–1847.

Dow's Reports; *Dow;* Eng. H. of L.; 6 vols.; 1813–1818.

Dow & Clark's Reports; *Dow & C.;* Eng. H. of L.; 2 vols.; 1827–1832.

Dowling's Practice Cases; *Dowl. P. C.;* Eng.; 9 vols.; 1830–1841.

Dowling's Practice Cases [A. & V.]; *Dowl. P. C.* N.S.; Eng.; 2 vols.; 1841–1843.[4]

reports appear to have and to merit a standing which may be denominated as "from fair to middling." See Wallace Reporters, 3d ed. 293.

[1] The third, fourth, and fifth editions, the fifth dated 1841, were "revised and corrected," as the title-page stated, "with great additions," and, as the preface adds, with many passages rewritten, by Serjeant Talfourd, afterward Mr. Justice Talfourd. The fame of this editor has given a sort of fame to these editions of the work. The sixth edition, published in 1845, is by Mr. Thyrwitt. The book, in itself, is not a work of any special legal interest of a general sort, though it doubtless answered well the purpose for which it was written.

[2] This is a very celebrated little work. It is understood to have been the production of Christopher St. Germain, whose name appears upon the title-page in some of the later editions. It was formerly many times reprinted. The last edition of which I am able to give any account, — I think, the last in fact, — is dated 1815. It is entitled "Doctor and Student; or, a Dialogue between a Doctor of Divinity and a Student in the Laws of England, containing the grounds of those laws; together with Questions and Cases concerning the equity thereof. Eighteenth edition, corrected and improved by William Muchall." The 17th edition, edited by Mr. Muchall, was published in 1787. It was first printed, in Latin, by Rastell, in 1528. And see for a further account, Bridgman Leg. Bib. 290. This work is little used at the present day.

[3] The reports in these volumes are highly esteemed, both for the intrinsic merits of the adjudications as pronounced by the court, and for the manner in which the reporter's work was executed. The first two volumes, especially, stand in the very highest rank of English reports. The third and fourth volumes were published long after these, by gentlemen who prepared them from the manuscripts of Mr. Douglas, the latter having relinquished the idea of publishing them himself. This circumstance considerably diminishes their value; though still I believe them to be good reports. The last English edition of the series is the 4th of the first two volumes, published in 1818; the four volumes bound in two. Speaking of the first two volumes, Bridgman says: "The first [edition] was printed in folio in 1782; the second in 1786, in folio (with additions which are printed separately); and the third, with additions, in royal octavo, in 1790. The profession, however, are much inconvenienced in referring to the later editions of these Reports, by reason that the pages of the first are not preserved." Bridgman Leg. Bib. 100.

[4] The only significance of the term "New Series" applied to these reports is to mark the distinction between them and the preceding series in nine volumes, the first five of which were by Alfred S. and the last by Alfred Dowling.

Dowling & Lowndes's Practice Cases; *Dowl. & L.;* Eng.; 7 vols.; 1843–1849.

Dowling & Ryland's Reports; *D. & R.;* Eng. K.B.; 9 vols.; 1822–1827.

Dowling & Ryland's Magistrates' Cases; *D. & R., M. C.;* Eng.; 3 vols.; 1822–1826.

Dowling & Ryland's Nisi Prius Cases; *D. & R., N. P.;* Eng.; 1 vol.; 1822, 1823.[1]

Drake on Attachments; *Drake Attach.;* 1 vol.; Am. Con.[2]

Draper's Reports; *Draper;* U.C., K.B.; 1 vol.; 1829–1831.

Drewry's Reports; *Drewry* (or *Drew.*); Eng. Ch.; 4 vols.; 1852–1859.[3]

Drewry & Smale's Reports; *Drewry & S.* (or *Drew. & S.* or *D. & S.*); Eng. Ch.; 1 vol.; 1859–1861.

Drury's Reports; *Drury* (or *Dru.*); Irish Ch.; 1 vol.; 1843, 1844.

Drury & Walsh's Reports; *Drury & Walsh;* Irish Ch.; 2 vols.; 1837–1840.

Drury & Warren's Reports; *Drury & Warren;* Irish Ch.; 4 vols.; 1841–1843.

Dudley's Reports; *Dudley, Ga.;* Ga.; 1 vol.; 1831–1833.

Dudley's Law Reports; *Dudley, S.C.;* S.C.; 1 vol.; 1837, 1838.

Dudley's Equity Reports; *Dudley Eq.;* S.C.; 1 vol.; 1837, 1838.[4]

Duer's Reports; *Duer;* N.Y.; 6 vols.; 1852–1857.

Dugdale's Origines Juridiciales; *Dug. Orig.;* 1 vol.; Eng.; 3d ed. 1680.[5]

Dunlap's Admiralty Practice; *Dunlap Adm. Pract.;* 1 vol.; Am. Con.

† Dunlop's Reports. Same as *Scotch Session Cases*, 2d series.

† Dunlop, Bell, & Murray's Reports. Same as *Scotch Session Cases*, 2d series.

Du Ponceau on the Jurisdiction of the United States Courts; *Du Ponceau Jurisd.;* 1 vol.; Am.; 1824.

[1] Only one part of an unfinished volume was ever published.

[2] The sections were renumbered in the second edition.

[3] There are likewise some cases, reported by Drewry, in Simons's Reports, New Series, vol. 2; Simons having been Drewry's immediate predecessor.

[4] This volume and the last are generally bound in one; at least, they are so in the last edition.

[5] The fuller title of this book is: "Origines Juridiciales; or, Historical Memorials of the English Laws, Courts of Justice, Forms of Tryal, Punishment in Cases Criminal, Law Writers, Law Books, Grants and Settlements of Estates, Degree of Serjeant, Inns of Court and Chancery, &c. Also, a Chronologie of the Lord Chancellors and Keepers of the Great Seal, Lord Treasurers," &c., &c. The last and best edition is the one cited in the text. This work is scarce, but almost indispensable to any person engaged in researches into the history of our law and its administration. Bridgman speaks of it as "that curious and authentic work," &c. He adds: "This book was first printed in 1666; secondly, in 1671; and, thirdly, with several curious prints, and the addition of about three leaves at the end, in 1680." Bridgman Leg. Bib. 102, 103. Dugdale was not a common-law lawyer; but he had studied the civil law, and was a celebrated antiquarian, writing books upon antiquarian topics, in various departments.

* Durfee's Reports. Same as 2 *Rhode Island.*
* Durnford & East's Reports. Same as *Term Reports.*[1]
Dutcher's Reports; *Dutcher;* N.J.; 5 vols.; 1855–1862.
Duvall's Reports; *Duvall;* Ky.; 1863 to the present time.
Dwarris on Statutes; *Dwar. Stat.;* 1 vol.; Eng. and Am. reprint of the 2d part. Con.
Dyer's Reports; *Dy.;* Eng.; 3 vols.; 1513–1582.[2]

§ 567. D. — Further Abbreviations.

† *D.* See *Scotch Session Cases.* Also, Dictum, Digest, Dictionary, and some other meanings.
† *D.C.* District Court, District of Columbia.
D. Chip. D. Chipman's Reports. See *Chipman.*
* *Di.* Dyer's Reports.

§ 568. E. — Principal Collection.

East's Reports; *East;* Eng. K.B.; 16 vols.; 1800–1812.[3]
East's Pleas of the Crown; *East P. C.;* 2 vols.; Eng. and Am. reprint; 1803.[4]
† Ecclesiastical and Admiralty Reports. Same as *Spinks.*
* Ecclesiastical Reports. Same as *English Ecclesiastical Reports.*
Eden's Reports; *Eden;* Eng. Ch.; 2 vols.; 1757–1766.[5]
Edwards's Admiralty Reports; *Edw. Adm.;* Eng.; 1 vol.; 1808–1812.
Edwards's Chancery Reports; *Edw. Ch.;* N.Y.; 4 vols.; 1831–1850.
Ellis & Blackburn's Reports; *Ellis & B.;* Eng. Q.B.; 8 vols.; 1852–1858.
Ellis, Blackburn, & Ellis's Reports; *Ellis, B. & E.* (or *E. B. & E.*); Eng.; Q.B.; 1 vol.; 1858.

[1] See ante, § 496, 497.

[2] Ante, § 412, 414. The best edition is the last, being by Vaillant, in English, published in 1794. There are none of the old reports more highly esteemed than these.

[3] Ante, § 497. This series of reports stands high in professional estimation.

[4] See 1 Bishop Crim. Proced. § 1088.

[5] These reports are of decisions by Lord Chancellor Northington, taken mainly from the Chancellor's manuscripts, and published long after his death. But they are well esteemed. See Wallace Reporters, 3d ed. 323. Says Chancellor Kent: "They surpass in accuracy the reports either of Ambler or Dickens within the same period; and the authority of Lord Northington is very great, and it arose from the uncommon vigor and clearness of his understanding." 1 Kent Com. 494.

English's Reports; *Eng.*; Ark.; 8 vols.; 1845–1853.[1]

* English Common Law Reports.[2]

* English Ecclesiastical Reports; *Eng. Ec.*[3]

* English Exchequer Reports. This is a general title given to a Philadelphia reprint.

[1] The first seven volumes of these reports are generally cited under the name of the reporter; but sometimes 6–12 *Ark.*; vol. 8 is always 13 *Ark.* See ante, § 560, *Arkansas*, note.

[2] This is a general title given to a Philadelphia reprint, the first edition of which originally consisted of condensed reports; but the second edition, and later parts of the first, contain the reports reprinted in full. These reports are sometimes, though not very correctly, cited — especially in the earlier volumes — by the Philadelphia title, numbering of volume, and page. Obviously they should not be so cited, unless the English volume and page is in each case also mentioned; because, since not all readers who possess the reports have them in this Philadelphia edition, the reference thus made will not accomplish its true object. But our American Reports contain references made in this incorrect way in such large numbers, that, to assist my readers to find the cases in the English editions, I deem it necessary to subjoin the following list of the contents of the earlier volumes: —

Vol. 1. Taunton's Reports, vols. 5, 6.
2. " " vol. 7. Starkie, vol. 1.
3. Holt, N.P., vol. 1. Starkie, vol. 2.
4. Taunton, vol. 8. Marshall, vols. 1, 2. J. B. Moore, vols. 1–3.
5. Broderip & Bingham, vol. 1. Barnewall & Alderson, vol. 3. Gow, vol. 1.
6. " " vol. 2. " " vol. 4.
7. Barnewall & Alderson, vol. 5. Broderip & Bingham, vol. 3.
8. Barnewall & Cresswell, vol. 1. Bingham, vol. 1.
9. " " vol. 2. " vol. 2.
10. " " vols. 3, 4.
11. Bingham, vol. 3. Barnewall & Cresswell, vol. 5. Carrington & Payne, vol. 1.
12. Carrington & Payne, vol. 2. Barnewall & Cresswell, vol. 5.
13. Bingham, vol. 3. Barnewall & Cresswell, vol. 6.

[3] This is a general title given to the Philadelphia edition of the following reports, condensed. The citation should be to the English edition. But this condensed edition does not preserve the English paging, except the page at which the report of each case begins; therefore it is sometimes convenient for American readers to have a reference to the particular page of the American reprint, as well as to the page in the English volume: —

Vol. 1. 1–3 Phillimore.
2. 1–3 Addams.
3. 1 Haggard; Fergusson's Scotch Consistorial.
4. 2 Haggard; 1 and 2 Haggard's Consistorial.
5. 3 Haggard; 1 Lee.
6. 2 Lee; 1 Curteis.
7. 2 and 3 Curteis.

English Law and Equity Reports; *Eng. L. & Eq.*; Eng. in Am. Comp.; 40 vols.; 1850–1857.[1]

* Equity Cases. Same as 9 *Modern*.

Equity Cases Abridged; *Eq. Cas. Abr.* (or *Eq. Abr.*); Eng. Ch.; 2 vols. (sometimes bound in 3).[2]

Vol. 14. Barnewall & Cresswell, vol. 7. Starkie, vol. 3. Carrington & Payne, vol. 3.
15. Bingham, vols. 4, 5. Barnewall & Cresswell, vol. 8.
16. Dowling & Ryland, vols. 1–3. J. B. Moore, vols. 4, 5.
17. J. B. Moore, vols. 6–10. J. B. Moore & Payne, vols. 1, 2. Manning & Ryland, vols. 1, 2. Barnewall & Cresswell, vol. 9.
18. Chitty, vols. 1, 2.
19. Bingham, vol. 6. Carrington & Payne, vol. 4.
20. „ vol. 7. Barnewall & Adolphus, vol. 1.
21. Barnewall & Cresswell, vol. 10. Bingham, vol. 8. Ryland & Moody.
22. Barnewall & Adolphus, vol. 2. Moody & Malkin, vol. 1. Dowling & Ryland, vol. 9. J. B. Moore, vols. 11, 12.
23. Barnewall & Adolphus, vol. 3. Bingham, vol. 9.
24. „ „ vol. 4. Carrington & Payne, vol. 5.
25. Bingham, vol. 10. Carrington & Payne, vol. 6.
26. Douglas, vols. 3, 4.
27. Barnewall & Adolphus, vol. 5. Bingham's New Cases, vol. 1.

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[1] The full title of this book is as follows: "English Reports in Law and Equity; containing Reports of Cases in the House of Lords, Privy Council, Courts of Equity and Common Law, and in the Admiralty and Ecclesiastical Courts; including also Cases in Bankruptcy, and Crown Cases reserved." The first thirty volumes were edited by Edmund H. Bennett and Chauncey Smith, and the remainder by Chauncey Smith. It was an attempt to produce early and full reports of English decisions for American use, in a more expeditious and convenient form than to reissue any one of the English series entire. Therefore the reports were, of necessity, taken, to a large extent, from the irregular reporters. In referring to this collection, we are obliged to use the American title; since the collection, as such, does not exist in England.

[2] This work is in the form of a digest, wherein the subjects are arranged alphabetically. It abridges or digests cases from the reports; and, in connection with them, many cases not elsewhere reported. It is, therefore, generally classed among the books of reports. Bridgman says, the first volume "was published in folio anno, 1732, 1734, and 1739 (all the same); again in 1756, corrected, with several new cases, and many additional references; and, lastly, in 1793, with very considerable additions, which are distinguished by italic characters. . . . In 1756, a supplement, or second part, or volume, was published in folio, containing the cases to the then present time; and in 1769 it was republished, with a new Table of the Principal Matters, and many references." Bridgman Leg. Bib. 111, 112. The last edition of the entire work of which I have any knowledge, purports to be the third; it is printed at Dublin, 1792 and 1793. It is in 8vo, and the second volume is bound in two, making in all three volumes. The first volume of this work is quite well esteemed; the second, not so well, yet not so low as the worst books of reports. And see Wallace Reporters, 3d ed. 305.

Equity Reports; *Eq. Rep.;* Eng. and colonial on Ap.; 3 vols.; 1853–1855.[1]

Erskine's Institute; *Ersk. Inst.;* 4 vols.; Scotch.[2]

Erskine's Principles of the Law of Scotland; *Ersk. Prin.;* 1 vol.[3]

Espinasse's Nisi Prius Reports; *Esp.;* Eng.; 6 vols.; 1793–1810.

Eunomus; *Eunomus;* 4 vols.; Eng.; 1774–1785.[4]

Exchequer Reports; *Exch.* (or *Ex.*); Eng.; 11 vols.; 1847–1856.[5]

Vol. 28. Adolphus & Ellis, vol. 1. Moore, Payne, & Scott, vols. 1, 2. Neville & Manning, vols. 1–3.
29. Adolphus & Ellis, vol. 2. Bingham's New Cases, vol. 2.
30. „ „ vol. 3. Moore & Scott, vols. 3, 4. Neville & Manning, vol. 4. Scott, vol. 2.
31. Adolphus & Ellis, vols. 4, 5.
32. Bingham's New Cases, vol. 3. Carrington & Payne, vol. 7.
33. Adolphus & Ellis, vol. 6. Bingham's New Cases, vol. 4.
34. „ „ vol. 7. Carrington & Payne, vol. 8.
35. Bingham's New Cases, vol. 5. Adolphus & Ellis, vol. 8.
36. Adolphus & Ellis, vol. 9. Scott, vols. 3, 4. Neville & Manning, vols. 5, 6. Neville & Perry, vols. 3, 4.
37. Adolphus & Ellis, vol. 10. Bingham's New Cases, vol. 6.
38. Carrington & Payne, vol. 9. Deacon, vol. 1.
39. Adolphus & Ellis, vol. 11. Manning & Granger, vol. 1.
40. „ „ vol. 12. „ „ vol. 2.
41. Carrington & Marshman, vol. 1. Queen's Bench, vol. 1.
42. Manning & Granger, vol. 3. Queen's Bench, vol. 2.
43. „ „ vol. 4. „ „ vol. 3.
44. „ „ vol. 5.
45. Queen's Bench, vol. 4.
46. Manning & Granger, vol. 6.
47. Carrington & Kirwan, vol. 1.
48. Queen's Bench, vol. 5.
49. Manning & Granger, vol. 7.

[1] This series must not be confounded with the one known as "Reports in Chancery." This is an irregular series, seldom referred to, and not much known.

[2] This is one of the leading Scotch law books,—a work of considerable authority. There are several editions. The last edition of which I have any knowledge is edited by Alexander Macallan, and printed in one large volume.

[3] This work, like the last, is in Scotland highly esteemed. It is considerably used as a text-book by students. There is a modernized edition, by John Guthrie Smith.

[4] The full title of this work is as follows: "Eunomus; or, Dialogues concerning the Law and Constitution of England, with an Essay on Dialogue. By Edward Wynne." Bridgman observes of it: "This scientific work would probably have been held in higher estimation had it been better known. But having been written before, and published after, the Commentaries of Sir William Blackstone, its ac-

[5] The first nine volumes are by Welsby, Hurlstone, & Gordon. The last two are by Hurlstone & Gordon alone.

§ 569. E. — Further Abbreviations.

* *E.C.L.* English Common Law Reports.
Edw. (or *Ed.* or † *E.*). The reign of King Edward; as, Stat. 1 Edw. 1, c. 1, means the first chapter of the statutes passed the first year of the reign of Edward I. See also, ante, § 568, Edwards.
* *E.E.R.* English Ecclesiastical Reports.
† *E. L. & Eq.* Same as *Eng. L. & Eq.*
E.T. Easter Term.

§ 570. F. — Principal Collection.

Fairfield's Reports; *Fairf.*; Maine; 3 vols.; 1833–1835.[1]
* Farresley's Reports. Same as 7 *Modern*.
Fearne on Contingent Remainders and Executory Devises; *Fearne Rem.*; 2 vols; Eng. also an Am. reprint. Con.[2]
Fearne's Posthumous Works; *Fearne Works*; 1 vol.; Eng.; 1797.
Federalist, The; *Federalist.*[3]

knowledged merits have been obscured, though not totally eclipsed, by the splendor of that great performance. It is, however, greatly valued, as having very much illustrated the principles of our laws and constitution, and given an instructive and rational account of the several branches into which the practice of the law is divided; and as having recommended, with much learning, a liberal and enlarged method of study in that science, pointing out its necessary connection with the other branches of literature. Mr. Hargrave has further observed, that this work treats incidentally of the character and authority of the several law writers, and more professedly of the origin and progress of the most important subjects and branches of the law, and their connection with the history and constitution of England." Bridgman Leg. Bib. 112. An objection almost decisive against the success of this work as a law book, under almost any circumstances, would seem to be, that the views of the writer, however correct in matter of law, are unsupported by references to the authorities. The work is very elementary, — scarcely up to the standard of professional literature. The fifth edition, edited by Bythewood, was published in 1822.

[1] Sometimes, but less correctly, cited as 10–12 *Maine*, which see.

[2] Bridgman says: This work was "first published, anno 1772; secondly, in 1773; and, thirdly, in 1776, in one volume octavo. Fourthly, a second volume, of executory devises only, in 1795; and, fifthly, in 1801, two volumes, octavo, from the author's last corrections." Bridgman Leg. Bib. 115. The last edition is, I think, the one of 1844, being the tenth. It contains additions previously made by Charles Butler, and is edited by Josiah W. Smith. It was reprinted at Philadelphia in 1845. The work has always been very highly esteemed. See, for a collection of testimonials and a sketch of the author's life, Allibone Dict. Authors, tit. *Fearne*.

[3] This is a collection of essays, written, and originally published, in 1788, after the Constitution of the United States had been framed in convention, but before its

Fell on Guaranties; *Fell Guar.;* 1 vol.; Eng. and Am. notes. Con.

* Ferard on Fixtures. Same as *Amos & Ferard.*

Fergusson's Reports of Divorce Cases in the Scotch Consistorial Court; *Ferg.;* 1 vol.; pub. 1817.

Fergusson's Consistorial Law; *Ferg. Consist. Law;* 1 vol.; Scotch; 1829.[1]

* Finch's Reports. Same as *Reports tempore Finch.*[2]

* Finch's Reports. Same as *Precedents in Chancery.*

Finch's Law; or, Finch's Discourse.[3]

Fitzgibbon's Reports; *Fitzg.;* Eng. all the courts; 1 vol.; 1728–1732.[4]

Fitzherbert's Abridgment; *Fitz. Abr.;* 1 vol.; Eng.[5]

Fitzherbert's Natura Brevium; *Fitz. Nat. Brev.* (or † *F.N.B.*); 2 vols.; Eng.[6]

Flanagan & Kelly's Reports; *Flan. & K.;* Irish, Ch.; 1 vol.; 1840–1842.

adoption by the States and the people, to explain and recommend it. It contains eighty-five essays, of which fifty-one are by Alexander Hamilton; namely, Nos. 1, 6, 7–9, 11–13, 15–17, 21–36, 59–61, 65–85. Twenty-nine are by James Madison; namely, Nos. 10, 14, 18–20, 37–58, 62, 63. And five are by John Jay; namely, Nos. 2–5, 64. The work is now accepted as a sort of text-book on the Constitution, partly political, and partly legal. The courts, in their expositions, have, to a great extent, followed its doctrines; but they have not always done so. What is laid down, therefore, by these essayists is not to be taken as certainly and absolutely correct. It is customary to refer to these essays by their numbers, and not by the pages, because the paging of the various editions differs.

[1] At the end of this volume there are some Reports, which may be referred to as *Ferg. Consist. Law Rep.*

[2] In Tomlins's "Repertorium Juridicum," this book is cited simply as Finch's Chancery Reports, abbreviated *Finch C. R.* But evidently such a reference, made now, would be confounded by readers with "Precedents in Chancery," a book with which the name of another Finch is connected. If the citation were simply *Finch*, the same consequence would likewise follow. The fuller name, therefore, "Reports tempore Finch," should always be given to this book; and such, I believe, is the established custom, at least in modern times. There is an old book known as "Finch's Law," which, of course, is to be cited by the name of the author. Of this book, Chancellor Kent says: "The treatise of Sir Henry Finch, being a discourse in four books, on the maxims and positive grounds of the law, was first published in French, in 1613; and we have the authority of Sir William Blackstone for saying, that his method was greatly superior to that of all the treatises that were then extant. His text was weighty, concise, and nervous, and his illustrations apposite, clear, and authentic. The abolition of the feudal tenures, and the disuse of real actions, have rendered half of his work obsolete." 1 Kent Com. 509.

[3] See the last note.

[4] The name is, upon the title-page, written Fitz-Gibbons, and in other law books it is sometimes so, and sometimes Fitz-Gibbon, or Fitz Gibbon, or Fitzgibbon, or Fitzgibbons. According to Mr. Wallace, the true spelling omits the *s*. These reports have been a good deal censured; and, on the other hand, there is authority for holding them to be well done. Wallace Reporters, 3d ed. 263.

[5] See ante, § 218, 219.

[6] See ante, § 414.

Fleta, seu Commentarius Juris Anglicani; *Fleta* (or *Fl.*)[1]
Florida Reports; *Fla.;* 1846 to the present time.[2]
* Fogg's Reports. Same as 32–37 *New Hampshire.*
Foley's Poor Law Reports; *Foley* (or *Fol.*); Eng.; 1 vol.; 1601–1730.[3]
Fonblanque on Equity; *Fonb. Eq.;* Eng. and Am. reprint; 5th ed. 2 vols., London, 1820.[4]
Forrest's Reports; *Forrest;* Eng. Exch.; 1 vol.; 1800, 1801.[5]
* Forrester's Reports. Same as *Cases tempore Talbot.*
Fortescue's Reports; *Fort.;* Eng. all the courts; 1 vol.; 1695–1738.[6]
Foster's Reports and Crown Law; *Foster;* Eng.[7]
Foster's Reports; *Fost. N.H.;* N.H.; 11 vols.; 1850–1856.[8]

[1] See 1 Kent Com. 501. This old book was formerly much consulted, but it is now practically almost obsolete. The name of the author is unknown. "The title, as the author informs his readers, was adopted from the circumstance of the book having been composed while he was a prisoner in the Fleet. . . . Fleta's Commentary seems to have passed through two editions only, each having a small treatise called *Fetasavoir* annexed, and Mr. Selden's Dissertation. The first was published in Latin, in 1647, and the second in 1685, quarto. The original publication of this work was from a very ancient manuscript, discovered by Mr. Selden in the Cottonian Library (being the only one then known to be extant); and, having been copied by an unskilful amanuensis, it was afterwards compared with the manuscript by Mr. Selden, who republished it in 1685, with many hundred corrections; yet still it is considered as very incorrect and imperfect." Bridgman Leg. Bib. 123, 124.

[2] Vol. 1, by Joseph Branch; 2, by James T. Archer; 3, 4, by David P. Hogue; 5–8, by Mariano D. Papy.

[3] Not of much authority or value. Wallace Reporters, 3d ed. 153.

[4] "The original of this celebrated work was published anonymously, in the year 1737. It was then very small, being nothing more than an essay. It was entitled 'A Treatise of Equity,' and was much and deservedly admired. In the year 1794, it was ushered into the world in a new and highly enlarged and improved form, by John Fonblanque, Esq. Few works have attained such universal approbation, or been more generally read. The notes are copious, perspicuous, and learned, and the authorities are full and pertinent." 1 Hoffman Leg. Study, 2d ed. 400, 401. At present, however, this work is much less used than formerly; being in a great measure superseded by later productions.

[5] These reports "form only a part of a volume, the further progress of it having ceased upon the author's going to India." Bridgman Leg. Bib. 125.

[6] There are several law books, other than reports, bearing the name of Fortescue; — with which, therefore, the reports should not be confounded. The most interesting of these is Sir John Fortescue's treatise De Laudibus Legum Angliæ, as to which, see 1 Kent Com. 501. The reports are "distinguished by elaborateness, and more, perhaps, by the solicitudes of taste, than by any power of thought." Wallace Reporters, 3d ed. 253.

[7] See 1 Bishop Crim. Proced. § 1082.

[8] Constituting vols. 21–31 *New Hampshire*, but generally cited Foster's Reports. The case is as follows: The volumes themselves are not numbered, either on the title-page or on their backs, as I have seen them bound, in connection with the "New Hampshire" series; and the reporter cites them as "Foster." So

Foster & Finlason's Reports; *Fost. & F.* (or *F. & F.*); Eng. N.P.; 1856 to the present time.

Fox & Smith's Reports; *Fox & S.* (or *F. & S.*); Irish, K.B. and Court of Error; 1 vol.; 1822–1824.

Francis's Maxims; *Francis Max.* (or *Fr. Max.*); 1 vol.; Eng. and Am. reprint.[1]

Frazer on the Personal and Domestic Relations; *Fraz. Dom. Rel.;* Scotch; 2 vols.; 1846.[2]

Freeman's Reports; *Freeman* (or *Freem.*); Eng. 1st part K.B. & C.P., 2d part Ch.; 2 parts; 1660–1706.[3]

Freeman's Reports; *Freeman, Missis.;* Mississippi, Ch.; 1 vol.; 1839–1843.

* Freeman's Reports,. Same as 31–38 *Illinois.*

§ 571. F. — Further Abbreviations.

† *F.* Fitzherbert, the latter part, &c.

† *F.N.B.* Fitzherbert's Natura Brevium.

§ 572. G. — Principal Collection.

Gabbett on Criminal Law; *Gab. Crim. Law;* 2 vols.; Irish, 1835 and 1843.[4]

do some of his successors. But in still later New Hampshire reports, I find them cited 21–31 N. H.

[1] See ante, § 562, *Branch*, note.

[2] I think there is a second edition of this work, which I have not seen. The work, as it appears in the first edition, though not of quite the highest order, is still a production of very substantial value. It was laboriously executed by an author of considerable legal capacity, and on several questions it is very useful for American reference.

[3] These reports, in two parts, were originally published in 1742, bound in one volume folio. They were consequently cited 1 and 2 Freeman. Since then, namely, in 1823, Hovenden edited a new edition of the Chancery Reports, being the second part, which was published in a separate volume, octavo. Afterward, in 1826, the first part was in like manner edited by Smirke, and it also was published in a separate octavo volume. Looking at the two volumes of the second edition only, one would suppose that they should be cited respectively *Freeman* and *Freeman Ch.* But as they were before cited 1 and 2 Freeman, the same form of citation continues. Some unfavorable opinions of them were expressed at first; but their reputation was afterward cleared of the cloud, and they may now be deemed, especially in the improved edition, to be reasonably fair reports. And see Wallace Reporters, 3d ed. 241.

[4] See 1 Bishop Crim. Proced. § 1086.

Gabbett's Digest, &c., of English and Irish Statutes; *Gab. Stat.;* 4 vols.; Irish.

Gale & Whatley on Easements; *Gale & W. Eas.;* 1 vol.; Eng. and Am. notes.[1]

Gale's Reports; *Gale;* Eng. Ex.; 2 vols.; 1834–1836.

Gale & Davison's Reports; *Gale & D.;* Eng. Q.B.; 3 vols.; 1841–1843.

Gallison's Reports; *Gallis.;* U.S. 1st Circuit; 2 vols.; 1812–1815.

* Gardenhire's Reports. Same as 14 and 15 *Missouri.*

* George's Reports. Same as 30–37 *Mississippi.*

Georgia Decisions; *Ga. Decis.;* Ga.; 2 parts, bound in 1 vol.; 1841–1843.

Georgia Reports; *Ga.;* 1846 to the present time.[2]

* Gibbs's Reports. Same as 2–4 *Michigan.*

Gibson's Codex Juris Ecclesiastici Anglicani; *Gibs. Cod.;* 2 vols. fol.; Eng. 2d ed. 1761.[3]

Giffard's Reports; *Gif.;* Eng. Ch.; 3 vols.; 1860–1862.

* Gilbert's Abridgment. Same as *Bacon's Abridgment.*[4]

Gilbert's Reports; *Gilb. Ch.* (or *Gilb.* or *Gilb. Eq.*); Eng. Ch.; 1 vol.; 1705–1727.[5]

[1] This work has been quite well received both in England and the United States. It was first published in the former country in 1839, and was reprinted in New York in 1840, with notes by Anthony Hammond. The third edition appeared in England in 1862, edited by W. H. Willes. From this edition the name of Whatley, the joint author according to the two former editions, is dropped; no reason is given, and no one would imagine, from any thing appearing in the work, that there had ever been any other author than Gale. Why this is, I do not know.

[2] Vols. 1–3, by James M. Kelly (usually cited under the name of the reporter); 4 and 5, by James M. Kelly and Thomas R. R. Cobb; 6–20, by Cobb; 21–29, by B. Y. Martin.

[3] This is a work of sterling value and is good authority. Dr. Burn drew on it largely when he compiled his "Ecclesiastical Law." And see 1 Bishop Mar. & Div. § 59.

[4] See ante, § 562, *Bacon's Abridgment*, note. Lord Chief Baron Gilbert was a very eminent lawyer, who died in 1726. He left manuscripts from which a large number of works have been printed; all of which, I believe, with the exception of Bacon's Abridgment, compiled from them, bear the real name of the author. These writings have always been highly respected, and their influence upon our law has been considerable. The reader will find them well enumerated in Bridgman Leg. Bib. 132. Of the treatises, perhaps the one on evidence, now indeed antiquated, has done the most to promote true legal science. All, however, have been highly serviceable. I shall mention the reports in my text. See also, 1 Kent Com. 511.

[5] To distinguish this book from the one next mentioned in the text, I give the title in full: namely, "Reports of Cases in Equity argued and decreed in the Courts of Chancery and Exchequer, chiefly in the Reign of George I., by a late learned Judge; to which are added some Select Cases in Equity in the Court of Exchequer in Ireland." There are two editions, 1734 and 1742, both in folio. The manuscript

Gilbert's Cases; *Gilb. Cas.;* Eng. K.B.; 1 vol.; 1713–1715.[1]
Gill's Reports; *Gill;* Md.; 9 vols.; 1843–1851.
Gill & Johnson's Reports; *Gill & J.;* Md.; 12 vols.; 1829–1842.
Gilman's Reports; *Gilman;* Ill.; 5 vols.; 1844–1849.
Gilmer's Reports; *Gilmer;* Va.; 1 vol.; 1820, 1821.
Gilpin's Reports; *Gilpin;* U.S. Dist. Pa.; 1 vol.; 1828–1836.
Glanville de Legibus; *Glanv. de Leg.* (or *Glanville*, or *Glanv.*); 1 vol.; Eng.[2]
Glascock's Reports; *Glasc.;* Irish, all the Courts; 1 vol.; 1831, 1832.
Glyn & Jameson's Bankruptcy Cases; *Glyn & J.* (or *G. & J.*); Eng.; 2 vols.; 1821–1828.
Godbolt's Reports; *Godb.;* Eng.; 1 vol.; 1575–1638.[3]
Godolphin's Abridgment of the Ecclesiastical Laws; *Godol. Ab.;* 1 vol.; Eng.[4]
Godolphin's Admiral Jurisdiction; *Godol. Adm. Juris.;* 1 vol.; Eng.[5]
Godolphin's Orphan's Legacy; *Godol. Orph. Leg.;* 1 vol.; Eng.
Gould on Pleading; *Gould Pl.;* 1 vol.; Am. Con.[6]

was surreptitiously obtained, and printed without the consent of Gilbert's representatives. In point of authority, the book stands very low indeed. See Wallace Reporters, 3d ed. 313.

[1] The title of this book is: "Cases in Law and Equity in the King's Bench and Chancery, in the 12th and 13th years of Queen Anne, during the time of Lord Chief Justice Parker. 1713–1715. With two Treatises, the one on the Action of Debt, and the other on the Constitution of England." The title is a misnomer; for the book does not contain a single *equity* case. It was first printed in London, 1760, octavo; second edition, "revised and corrected, with many additional notes and references," Dublin, 1792, octavo also. This volume appears not to stand much better, in professional estimation, than the one to which the last note relates. Wallace Reporters, 3d ed. 256.

[2] See 1 Kent Com. 498 et seq.; ante, § 562, *Bracton*, note. This is one of the oldest books of the ante-Coke period, not much used now. There is an English translation by Beames, published, London, 1812. This book should not be confounded with the "Reports of Controverted Elections, and Historical Account," &c., by John Glanville.

[3] A volume of reports not very highly esteemed, yet not of the lowest order. And see Wallace Reporters, 3d ed. 142, 149. "Though called Judge Godbolt's Reports, this person seems only to have been owner of the manuscript from which the work was printed. The editor was William Hughes, a respectable lawyer of his time, and the editor and translator of Leonard's Reports. Many of the cases are in Leonard, Anderson, and other reporters." Ib. 142.

[4] 1 Bishop Mar. & Div. § 58. Godolphin was born 1617, died 1687. He was an admiralty and ecclesiastical judge, and afterward was king's advocate. He wrote on divinity and on law. His legal works are of very substantial merit; though, at the present day, they are not much consulted, while still they continue to be regarded with much respect.

[5] See 3 Mason, 245.

[6] As a condensed summary of the rules and principles of the law of pleading, nothing better has ever appeared, either in England or the United States, than this work.

Gouldsborough's Reports; *Gouldsb.;* Eng.; 1 vol.; 1586–1602.[1]
Gow's Nisi Prius Reports; *Gow;* Eng.; 1 vol.; 1818–1820.
Grant on Corporations; *Grant Corp.;* 1 vol.; Eng. and Am. reprint. Con.
Grant's Reports; *Grant, Pa.;* Pa.; 3 vols.; 1852–1863.[2]
Grant's Reports; *Grant, U.C.;* U.C. Ch.; 8 vols.; 1849–1860.
Grattan's Reports; *Grat.;* Va.; 15 vols.; 1844–1860.
Gray's Reports; *Gray;* Mass.; 14 vols.; 1854–1860.
Green's Chancery Reports; *Green, Ch.;* N.J.; 3 vols.; 1838–1846.
Green's Law Reports; *Green, N.J.;* N.J.; 3 vols.; 1831–1836.
Greene's Reports; *Greene, Iowa;* Iowa; 4 vols.; 1847–1854.
Greenleaf's Reports; *Greenl.;* Maine; 9 vols.; 1820–1832.[3]
Greenleaf on Evidence; *Greenl. Ev.;* 3 vols.; Am. Con.[4]
Greenleaf's Overruled Cases; *Greenl. Ov. Cas.;* 1 vol.; Am. Con.
* Griswold's Reports. Same as 14–19 *Ohio.*
Grotius de Jure Belli et Pacis; *Gro. Bel. et Pacis.*[5]
Guy's Medical Jurisprudence; *Guy. Med. Jurisp.;* 1 vol.; Eng. and Am. reprint.

[1] A work about like Godbolt (see supra) in point of authority. There are two editions, 1653 and 1682, quarto. "The first and second editions are the same." Bridgman Leg. Bib. 139.

[2] These volumes contain cases which were omitted by the regular State reporters.

[3] These reports are counted into the series which is cited, in its later volumes, as Maine Reports; constituting the first nine volumes. But hitherto the custom is to cite them by the name of the reporter. See post, *Maine.*

[4] See ante, § 310, 311.

[5] See ante, § 138. I do not know that there is any particular form of the abbreviation established by usage. I have seen it in almost every possible form. Hoffman borrows from an anonymous writer the following sketch of the author's life and labors: "Hugo Grotius, or de Groot, was born at Delft, April, 1583. He was a person of uncommon genius, and without controversy one of the greatest men of his age. When but eight years old, he made Latin verses which would have been no discredit to the mature age of an accredited poet. When but fifteen years old, he had acquired a very critical knowledge of philosophy, mathematics, and jurisprudence. At twenty-four years of age, he was made Advocate General. In 1613, he settled at Rotterdam, and became Syndic of that city. At this time Holland was greatly agitated with the (religious) disputes of the Remonstrants and Contra-remonstrants. Barneveldt, the intimate friend and patron of Grotius, declared in favor of the former, and Grotius by his writings and influence supported the party of his benefactor. This business ended in the ruin of Barneveldt, who lost his head; and Grotius, involved in his ruin, was condemned to perpetual imprisonment, and shut up in the castle of Louvestein. His wife, observing that the chest in which his linen, &c., passed and repassed from the prison, had ceased to be inspected by the guards, advised him to shut himself up in it, and endeavor to make his escape. Holes were bored in the chest to admit the air, and Grotius, locked up in it, was carried out unobserved, his wife remaining in his stead. He

§ 573. G. — Further Abbreviations.

Geo. (or *G.*). The reign of King George, as 1 Geo. 2, c. 25, meaning the first year of the reign of Geo. II., chapter 25.

Gl. *Glossa*, a Gloss.

§ 574. H. — Principal Collection.

Haggard's Admiralty Reports; *Hag. Adm.;* Eng.; 3 vols.; 1822–1838.

was carried in safety to a friend's house at Gorcum, where, dressing himself like a mason, and taking a rule and trowel in his hand, he passed unnoticed through the market-place, took boat, and arriving in safety in Velvet, in Brabant, he took carriage and got thence to Antwerp. Some of the judges were of opinion that Grotius' wife should be kept in prison in his stead; but she was liberated by a majority of voices, and her conduct universally applauded. Grotius then retired to France, where Louis XIII. gave him a pension of one thousand crowns per annum; but of this he was deprived by the influence of Cardinal de Richelieu, in 1631. In 1634, he became counsellor to Christina, queen of Sweden, who sent him embassador to France. In this station he remained for eleven years; and, when he returned to Sweden to give an account of his mission, he asked, and with great difficulty obtained his dismission. On his return to his own country, whither he had been warmly invited (his enemies being almost all dead), he was taken ill on the way, and died at Rostock, Aug. 28, 1645, in the sixty-second year of his age. Grotius was a great lawyer, a great critic, a great divine, and a good man. His numerous writings have immortalized him, especially his treatise on War and Peace, and his Truth of the Christian Religion." 1 Hoffman Leg. Study, 130, 131. There have been several editions of the *De Jure Belli et Pacis* prepared for English readers. It was "translated by William Evarts, B. D., and published in folio, anno 1682; again, in three volumes octavo, anno 1715; and lastly in folio, anno 1738, with all the large notes of Barbeyrac." Bridgman Leg. Bib. 139. "There is a recent and admirable translation by the Rev. A. C. Campbell, with very valuable annotations. The whole has been newly arranged, and the mass of classical learning, and numerous quotations, which so strongly mark the original, are omitted; but the notes and other improvements make great amends. Mr. Campbell's work is in three volumes octavo, and was printed at Pontefract, in 1814." 1 Hoffman Leg. Study, 2d ed. 124. At present, the edition which should probably be regarded as the best, while it is the latest, is by Whewell, published at Cambridge, Eng., 1853. Some of the impressions have the imprint London, and a later date. It gives us the original Latin text entire, followed at the bottom of each page by an abridged translation into English. The consequence is, that the reader has the pith and real substance of all in readable English; while, if he wishes to make minute examinations, and refer to all the authorities and extracts to which objection is sometimes made, he has the exact and full Latin original before him. This edition is in three octavo volumes. "What legal student, ambitious of deep and solid learning," exclaims Hoffman, p. 124, "would be willing to acknowledge an unacquaintance with the treatise, *De Jure Belli et Pacis?*"

Haggard's Consistory Court Reports; *Hag. Con.;* Eng.; 2 vols.; 1752–1821.[1]

Haggard's Ecclesiastical Reports; *Hag. Ec.;* Eng.; 4 vols.; 1827–1833.[2]

Hale's Pleas of the Crown; *Hale P.C.* (or † *Hale*, or † *H.P.C.*); 2 vols.; Eng. and Am. notes.[3]

Hale's Jurisdiction of the House of Lords; *Hale Jurisd. H.L.;* 1 vol.; Eng. Int. by Hargrave, 1796.

Hale's History of the Common Law; *Hale Hist. Com. Law* (or † *H.H.C. L.*); 2 vols.; Eng. 5th ed. 1794.

Hall's Reports; *Hall;* N.Y. City Superior Court; 2 vols.; 1828, 1829.

Hall & Twells's Reports; *Hall & T.* (or *H. & T.*); Eng. Ch.; 2 vols.; 1849, 1850.

Halleck's International Law; *Halleck Int. Law;* 1 vol.; Am.; 1861.

Halsted's Law Reports; *Halst.;* N.J.; 7 vols.; 1821–1831.

Halsted's Chancery Reports; *Halst. Ch.;* N.J.; 4 vols.; 1845–1853.

* Hamerton, Allen, & Otter's Reports. Same as 3 *New Sessions Cases.*

* Hammond's Reports. Same as 1–9 *Ohio.*[4]

Handy's Reports; *Handy;* Ohio, Superior Court of Cincinnati; 2 vols.; 1854–1856.[5]

Hardin's Reports; *Hardin;* Ky.; 1 vol.; 1805–1808.

Hardres's Reports; *Hardres* (or *Hardr.* or *Hard.*); Eng. Ex.; 1 vol.; 1654–1669.[6]

Hare's Reports; *Hare;* Eng. Ch.; 10 vols.; 1841–1853.[7]

Hare & Wallace's Leading Cases; *Hare & W. Lead. Cas.;* Am.; 2 vols. Con.

[1] Sometimes cited as "Consistory Reports" simply, omitting the name of the reporter. They contain the decisions, in the Ecclesiastical Court, of the famous Lord Stowell, or, as the name is in the report, Sir William Scott. And see 1 Bishop Mar. & Div. § 61.

[2] The fourth volume was never finished.

[3] See ante, § 202, 513; 1 Bishop Crim. Law, 4th ed. § 41; 1 Bishop Crim. Proced. § 1080. The title of this book is "History of the Pleas of the Crown." It was a posthumous publication. I do not see any very good reason why this work should be called, as it was by the author himself, a "history," &c. It is not particularly historical in its nature, and it is familiarly known simply as "Hale's Pleas of the Crown." This work has practically superseded the abridgment before published, known as "Hale's Summary," or "Hale's Pleas of the Crown."

[4] These reports were formerly cited under the name of the reporter.

[5] The second volume was never finished.

[6] There has been published but one edition of this volume, which is in folio, 1793. "There is a chasm in the paging, from 232 to 301." Bridgman Leg. Bib. 149. One would suppose that, if the collection were highly esteemed, it would have reached at least a second edition. Still, Mr. Wallace has a good word for it. Wallace Reporters, 3d ed. 201.

[7] There is an eleventh volume which consists of an index to the preceding ten.

Hargrave's Law Tracts; *Harg. Law Tracts;* 1 vol.; Eng.[1]
Hargrave's State Trials; *Harg. St. Tr.;* Eng. &c.; 11 vols.; fol.[2]
* Harmon's Reports. Same as 13–15 *California.*
Harper's Law Reports; *Harper;* S.C.; 1 vol.; 1823, 1824.
Harper's Equity Reports; *Harper Eq.;* S.C.; 1 vol.; 1824.
Harrington's Reports; *Harring. Del.;* Del.; 5 vols.; 1832–1855.
Harrington's Chancery Reports; *Harring. Mich.;* Mich.; 1 vol.; 1838–1842.
Harris's Pennsylvania State Reports; *Harris, Pa.;* 12 vols.; 1849–1855.[3]
Harris & Gill's Reports; *Har. & G.;* Md.; 2 vols.; 1826–1829.
Harris & Johnson's Reports; *Har. & J.;* Md.; 7 vols.; 1800–1826.
Harris & McHenry's Reports; *Har. & McH.;* Md.; 4 vols.; 1700–1799.
* Harrison's Reports. Same as 15, 16, 23–26 *Indiana.*
Harrison's Reports; *Harrison;* N.J.; 4 vols.; 1837–1842.[4]
Harrison & Wollaston's Reports; *Har. & W.;* Eng. K.B. &c.; 2 vols.; 1835, 1836.
Hawkins's Pleas of the Crown; *Hawk. P.C.* (or † *Hawk.*); 2 vols.; Eng. Con.[5]

[1] This work was published in quarto, then reprinted in Dublin in octavo. Both impressions are dated 1787. The volume is noted on the title-page as "Vol. I.;" but no second volume was ever published.

[2] See post, *Howell.*

[3] Same as 13–24 *Pennsylvania State,* by which title they are sometimes cited. See post, *Pennsylvania State.*

[4] The abbreviation is sometimes *Harr.* or *Har.;* but either of these forms is bad, as being confounded with an abbreviation for Harris or Harrington.

[5] See 1 Bishop Crim. Law, 4th ed. § 41; 1 Bishop Crim. Proced. § 1081. It is a little remarkable that this celebrated standard work has never been reprinted in the United States. In England it "passed through five editions in folio, in the years 1716, 1724, 1739, 1762, and 1771. But the sixth and seventh [in octavo] were corrected and enlightened under the editorship of Thomas Leach, Esq., whose mode of digesting the subject-matter before him has considerably added to the value and utility of the original work. The learned editor has carefully collated the text with the original, corrected the marginal references, added new references from the modern reports, inserted a variety of manuscript cases, and enlarged the whole by an incorporation of the several statutes upon subjects of criminal law, to 35 Geo. 3; to which he has prefixed an explanatory preface, and subjoined a new and copious index. The sixth edition was published in two volumes royal octavo, anno 1787; and the seventh in four volumes, royal octavo, anno 1795." Bridgman Leg. Bib. 154, 155. In 1824, the eighth edition, which is the last, appeared under the editorship of John Curwood, in two octavo volumes. In most respects, this is better than Leach's. But the editor committed the indiscretion of changing the order of the discussion in the first volume, to harmonize with the order pursued by Blackstone. Such a thing is almost unpardonable in any editor. The proper reference to this book, with the exception of vol. i. of Curwood's edition, is to the chapter and section. In this respect, and with this exception, all the editions which I have seen are alike.

Hawkins's Abridgment of Coke's First Institute; *Hawk. Co. Lit.*[1]
Hawks's Reports; *Hawks;* N.C.; 4 vols.; 1820–1826.
Hayes's Reports; *Hayes;* Irish, Ex.; 1 vol.; 1830–1832.
Hayes & Jones's Reports; *Hayes & J.;* Irish, Ex.; 1 vol.; 1832–1834.
Haywood's Reports; *Hayw.;* vols. 1, 2 (1789–1806), N.C.; vols. 3–5 (1816–1818), Tenn.
Head's Reports; *Head;* Tenn.; 3 vols.; 1858–1860.
* Heath's Reports. Same as 36–40 *Maine.*
Hemming & Miller's Reports; *Hemm. & M.;* Eng. Ch.; 2 vols.; 1862–1865.
Hempstead's Reports; *Hemp.;* U.S. Circt. Dist. &c.; for Ark.; 1 vol.; 1839–1856.
Hening's Maxims; *Hen. Max.;* 1 vol.; Am.[2]
Hening & Munford's Reports; *Hen. & Munf.;* Va.; 4 vols.; 1806–1809.
* Hepburn's Reports. Same as 2–4 *California.*
Hetley's Reports; *Hetley;* Eng.; 1 vol.; 1726–1732.[3]
Hill's Reports; *Hill, N.Y.;* N.Y.; 7 vols.; 1841–1844.
Hill's Law Reports; *Hill, S.C.;* S.C.; 3 vols.; 1833–1837.
Hill's Chancery Reports; *Hill Ch.;* S.C.; 2 vols.; 1838.
Hill on Trustees; *Hill Tr.;* 1 vol.; Eng. and Am. notes.
Hill & Denio's Reports; *Hill & D.;* N.Y.; 1 vol.; 1842–1844.[4]

[1] I do not know that there is any established form for this abbreviation. Says Bridgman: "Mr. Serjeant Hawkins favored the profession with an abridgment of the first part of Lord Coke's Institutes [Coke upon Littleton], which has been quoted with much approbation by Sir William Blackstone (Com. b. 3, c. 17), and which has passed through several editions; namely, in 1714, 1718, 1725, 1736, and 1742, all of which are the same, except the last, which frequently wants the index. To a subsequent edition [seventh] in 1751 (12mo), there are great additions, explaining many of the difficult cases, and showing in what points the law has been altered by late resolutions and acts of parliament, as also a large index in nature of analysis." Bridgman Leg. Bib. 155, 156. I will add, that Hawkins, assisted by Brooke, edited an edition of the statutes, which, in its time, was highly esteemed. It preceded the somewhat noted edition by Cay.

[2] The full title is: "Maxims in Law and Equity; comprising Noy's Maxims, Francis's Maxims, and Branch's Principia Legis et Æquitatis; with a translation of the Latin Maxims, and references to Modern Authorities, both British and American. Richmond, 1824." See ante, § 562, *Branch,* note.

[3] "Sir Thomas Hetley is said to have been one of the persons appointed by Sir Francis Bacon and Sir Julius Cæsar (with a salary of £100), in the reign of King Jac. I. to the office of reporter of the law. It is doubtful, however, whether such an office ever existed; and, if it did, the collection of Sir Thomas Hetley, printed in 1657, is far from bearing any marks of peculiar skill, information, or authenticity." Bridgman Leg. Bib. 157. The volume is a thin folio. And see Wallace Reporters, 3d ed. 196.

[4] This volume was compiled by Mr. Lalor; and we occasionally see it cited under his name. It is so in Chinton's New York Digest. In Abbott's New York

Hilliard's Law of Real Property; *Hilliard Real Prop.;* 2 vols.; Am. Con.[1]

* Hillyer's Reports. Same as 20–22 *California.*

Hilton's Reports; *Hilton* (or *Hilt.*); N.Y. City, Common Pleas; 2 vols.; 1855–1860.

Hobart's Reports; *Hob.;* Eng. K.B. &c.; 1 vol.; 1603–1625.[2]

Hodges's Reports; *Hodges;* Eng. C.P.; 3 vols.; 1835–1837.

Hoffman's Chancery Reports; *Hoffman* (or *Hoffm.* or *Hoff.*); N.Y.; 1 vol.; 1839, 1840.

Hogan's Pennsylvania State Trials; *Hogan St. Tr.;* Pa.; 1 vol.[3]

Hogan's Reports; *Hogan* (or *Hog.*); Irish, Ch.; 2 vols.; 1828–1834.

* Hogue's Reports. Same as 3, 4 *Florida.*

Holcombe's Leading Cases on Commercial Law; *Hol. Lead. Cas.;* U.S. Sup. Ct.; 1 vol.

Holt's Reports; *Holt;* Eng.; 1 vol.; 1688–1710.[4]

Digest it is the other way. The original issue appeared lettered on the back "Hill & Denio's Reports;" moreover, it is a fair inference from the preface that the compiler intended it should be so cited. The material was furnished in part by Mr. Hill and in part by Mr. Denio, two former reporters.

[1] There are several other contemporaneous law books by Mr. Hilliard; as, on "Mortgages," on "Vendors and Purchasers of Real Property," on "Sales of Personal Property," on "Bankruptcy and Insolvency," on "Torts," on "Remedies for Torts," on "New Trials," on "Injunctions."

[2] See 1 Kent Com. 483. These are among the best of the old reports. They were "first printed in quarto, in 1641, and afterwards they were reprinted in 1650, 1671, 1678, or 1688, with no other alteration than a new title. . . . The last [English] edition was the fifth [revised and corrected from the errors of former impressions, by Lord Chancellor Nottingham], and with the addition of many thousand references by Edward Chilton, Esq. It was published in folio, anno 1724." Bridgman Leg. Bib. 159. From this fifth English edition an American one was published in 1829. Some of the cases not deemed applicable in this country were omitted. This great mistake was atoned for by the addition of very valuable notes by John M. Williams, a very able and careful lawyer, afterward Chief Justice of the Court of Common Pleas of Massachusetts. One needs properly to possess both this American edition and one of the English editions.

[3] The full title is: "The Pennsylvania State Trials; containing the Impeachment, Trial, and Acquittal of Francis Hopkinson and John Nicholson, the former being Judge of the Court of Admiralty, and the latter Comptroller-General of the State of Pennsylvania. Philadelphia, 1794."

[4] The full title of this book is: "A Report of all the Cases determined by Sir John Holt, from 1688 to 1710, during which time he was Lord Chief Justice of England." It was printed in folio in 1738, and has never been reprinted. Holt was a great lawyer, and, if this volume contained the only record we have of his decisions, it would be more sought after. Its reputation is not very good. And most of the cases are found at greater length and better reported in other books, — from which, in fact, a large part of these were abridged. Giles Jacob, the compiler of Jacob's Law Dictionary, and any quantity of other law books, is the reputed getter up of this collection. And see Wallace Reporters, 3d ed. 247.

Holt's Nisi Prius Reports; *Holt, N.P.;* Eng.; 1 vol.; 1815–1817.
Holt's Equity Reports; *Holt Eq.;* Eng. Ch.; 1 vol.; 1845.
* Hooker's Reports. Same as 25–32 *Connecticut.*
Hopkinson's Admiralty Reports; *Hopk. Adm.;* Pa.; 1 vol.; 1783–1788.[1]
Hopkins's Chancery Reports; *Hopkins* (or *Hopk. Ch.* or *Hop.*); N.Y.; 1 vol.; 1823–1826.
Horn & Hurlstone's Reports; *Horn & H.* (or *H. & H.*); Eng. Ex.; 2 vols.; 1838 et seq.[2]
* Horne. See *Mirror of Justices.*
* Horwood's Reports. See ante, § 146.
Hosack's Conflict of Laws of England and Scotland; *Hosack Confl. Laws;* 1 vol.; Eng., 1847.
House of Lords Cases; *H. L. Cas.;* Eng. H. of L.; 11 vols.; 1849–1866.[3]
Howard's Reports; *How. U.S.;* U.S. Sup. Court; 24 vols.; 1843–1860.
Howard's Reports; *How. Missis.;* Mississippi; 7 vols.; 1834–1843.
Howard's Cases in the Court of Appeal; *How. N.Y.* (or *How. Ap. Cas.*); N.Y.; 1 vol.; 1847, 1848.
Howard's Practice Cases; *How. Pr.;* N.Y.; 1844 to the present time.
Howell's State Trials; *Howell St. Tr.* (or *How. St. Tr.*); Eng.; 33 vols., and vol. 34 of Index; from the earliest period to 1820.[4]

[1] See ante, § 562, *Bee*, note. The fuller title is: "Judgments in the Admiralty of Pennsylvania, in Four Suits brought as for Maritime Hypothecations; also, the Case of Silas Talbot against the Brigs Achilles, Patty, and Hibernia; and of the Owners of the Hibernia against their Captain, John Angus. With an Appendix containing the testimony exhibited in the Admiralty in those Causes. By Hon. Francis Hopkinson, Judge. Philadelphia, 1789." The volume contains 130 pages.

[2] The second of these is, I believe, an unfinished volume. I cannot tell how far down it extends; but the first does not go further than 1839. I never saw the second. These are not what are called the regular reports, but are a side series of no great account. I had previously noted that there was an unfinished second volume; but, in preparing this list, forgetting what was my authority on the previous occasion, I looked through every law catalogue at hand, English and American, and I could find nowhere any mention of more than one volume. Falling in, however, with a gentleman who is extraordinarily well posted in these matters, he states that Harrison's Digest contains references to volume two; that the cases thus referred to are ascertained, on examination, not to be in volume one, consequently the references cannot be presumed to be a misprint, and his remembrance, like mine, is that volume two is somewhere stated to be unfinished. I hope, should this work reach a second edition, to be able to give in it a more accurate account of these reports.

[3] Vols. 1 and 2, by Charles Clark and W. Finnelly; the rest by Clark. Sometimes, but less correctly, cited as Cl. & F., N. S. An Index is advertised as in preparation, to constitute vol. 12.

[4] This work is sometimes, but less correctly, cited as Cobbett's State Trials. The first twenty-one volumes, extending down to 1783, are substantially a reprint of Hargrave's State Trials; which was itself, likewise, a substantial reprint of earlier editions. Howell's is properly the 5th ed. The paging in Howell does not agree with the paging of the previous editions. To remedy this difficulty, Howell

* Hubbard's Reports. Same as 45–51 *Maine.*

Hudson & Brooke's Reports; *Hud. & B.* (or *H. & B.*); Irish, K.B.; 2 vols.; 1827–1831.

* Hughes's Reports. Same as *Godbolt.*

Hume on the Criminal Law; *Hume Crim. Law;* 2 vols.; Scotch.[1]

Humphreys's Reports; *Humph.;* Tenn.; 11 vols.; 1839–1851.

Hurlstone & Coltman's Reports; *H. & C.;* Eng. Ex.; 4 vols.; 1862–1865.

* Hurlstone & Gordon's Reports. Same as *Exchequer.*

Hurlstone & Norman's Reports; *H. & N.;* Eng. Ex.; 6 vols.; 1856–1861.

Hurlstone & Walmsley's Reports; *H. & W.;* Eng. Ex.; 1 vol.; 1840, 1841.[2]

Hutton's Reports; *Hut.* (or *Hutt.*); Eng. C.P.; 1 vol.; 1612–1639.[3]

§ 575. H. — Further Abbreviations.

H. Bl. Henry Blackstone's Reports.[4]

gives a Table of Parallel Pages, by means of which a reader having a reference to Hargrave's edition can find the passage in Howell. The editor of the first twenty-one volumes was Thomas Bayly Howell; of the next twelve, Thomas Jones Howell; and the Index, or thirty-fourth volume, was prepared by David Jardine. The reports of the Trials are generally given in full, mingling law and fact. The law is some of it excellent, some of it execrable, and some of it not exactly either. This is a standard work; yet, of necessity, it is not, as it cannot be, a work exactly of legal authority. It may always, of course, be cited to the courts, and they will do as they choose about following its doctrines.

[1] This may be termed *the* Scotch book on the criminal law, as respects both intrinsic excellence and acceptation by the courts as an authority. The author was David Hume, Baron of the Exchequer of Scotland, and nephew of the celebrated historian of the same name. He was born in 1765, and died in 1838. The last edition of his work on the criminal law is, I think, the third; and there is accompanying it a supplemental volume by Benjamin Robert Bell. This is truly a very valuable work. Mr. Alison's two books, on the Law and the Practice, in Criminal Cases, mentioned ante, § 560, *Alison,* are, though later, greatly inferior to the volumes by Hume, while they are also more condensed.

[2] This is an unfinished volume of 160 pages. No more was ever published.

[3] This is a thin volume, the publication was posthumous, and the cases were from the notes of nobody knows whom. The title-page states that they are "choice cases." The collection, therefore, never attracted much attention, and is not esteemed of great value. It was "first published in 1656; and, secondly, corrected, with many additional references, in 1682." Bridgman Leg. Bib. 165; Wallace Reporters, 3d ed. 179. Besides this book, there is a volume by another Hutton, W., published in 1806, with the following title: "Courts of Requests, their Nature, Utility, and Powers described, with a variety of Cases determined in that of Birmingham."

[4] See ante, § 509, 562, *Blackstone* and note.

* *H.P.C.* Hale's Pleas of the Crown.
Hen. (or †*H.*). The reign of King Henry.
Hil. T. (or *H.T.*) Hilary Term.

§ 576. I. — Principal Collection.

Illinois Reports; *Ill.;* 1849 [when vol. 11 commences] to the present time.[1]
Indiana Reports; *Ind.;* 1847 to the present time.[2]
Intrationum Liber; *Int. Lib.* (or *Lib. Int.*)[3]
Iowa Reports; *Iowa;* Iowa; 1855 to the present time.[4]
Iredell's Law Reports; *Ire.* (or *Ired.*)[5]; N.C.; 13 vols.; 1840–1852.
Iredell's Equity Reports; *Ire. Eq.;* N.C.; 8 vols.; 1840–1852.
Irish Law Reports; *Ir. Law;* 13 vols.; 1838–1850.
Irish Equity Reports; *Ir. Eq.;* 13 vols.; 1838–1850.
Irish Common Law Reports; *Ir. Com. Law* (or *Ir. C. L.*); 17 vols.; 1850–1866.
Irish Chancery Reports; *Ir. Ch.;* 17 vols.; 1850–1866.[6]
Irvine's Reports; *Irvine;* Scotch Justiciary [Crim. Law]; 1852 to the present time.

[1] The earlier volumes of reports of this State are by Breese, by Scammon, and by Gilman, — three series, — all cited by the names of their reporters. Peck followed Scammon as reporter, and the first volume of his reports was called Illinois Reports, and it was numbered 11, a number made up by counting in the volumes by Breese, Scammon, and Gilman. The reports by Peck, therefore, and all the subsequent reports of this State, are cited by the name of the State. Vols. 11–30 Illinois are by Peck: 31–38, by Freeman.

[2] When the reports of this State were first called after the name of the State, the preceding volumes were *not* counted in to ascertain the number, as in Illinois and many of the other States; Vols. 1 and 2 are by Horace E. Carter (sometimes, but less correctly, cited under the name of the reporter); 3–7, by Albert G. Porter; 8–14, by Gordon Tanner; 15–17 and 23–26, by Benjamin Harrison; 18–22, by Michael C. Kerr.

[3] Sometimes called the Old Book of Entries. The first edition was published in 1510; the second, in 1546.

[4] Vols. 1–8, by Clarke; 9–20, by Withrow. A series of reports by Greene, cited by the name of the reporter, precedes this.

[5] See ante, § 506.

[6] The two series known as *Ir. Com. Law* and *Ir. Ch.* are sometimes called Irish Law and Irish Equity *New Series;* but the text gives the correct designation of the several series, and the abbreviations employed in the reports themselves. I am not certain that there may not be one or two more volumes of these reports and of the *Ir. Com. Law.*

§ 577. I. — Further Abbreviations.

Inst. Lord Coke's Institutes.[1]

§ 578. J. — Principal Collection.

Jacob's Law Dictionary; *Jacob Law Dict.;* Eng.[2]
Jacob's Reports; *Jacob;* Eng. Ch.; 1 vol.; 1821, 1822.
Jacob & Walker's Reports; *Jacob & W.;* Eng. Ch.; 2 vols.; 1819–1821.
James's Reports; *James;* Nova Scotia; 1 vol.; 1853–1855.

[1] See ante, § 564, *Coke*, and note.

[2] Giles Jacob, the author, was born in 1686, and died in 1744. He "was the author," says Allibone, "of more than thirty works, of which twenty-five were law books." Bridgman, whose book was published in 1807, gives a list of these law books, — though, whether his list mounts up to the full twenty-five, I have not counted to see. It makes one breathe quick, long before he gets through reading the names of the titles. I presume no person in modern days ever did, or ever will, see all these books in one collection together; unless, possibly, some one of the English Inns of Court may have them. "But," says Bridgman, "it was reserved for the year 1729 to produce the *Chef des Oeuvres* of Mr. Giles Jacob, comprehended in his 'New Law Dictionary, which contains the Interpretation and Definition of Words and Terms, used in the Law, as also the whole Law and Practice thereof, under the proper heads and titles, together with such Learning relating thereto as explains the History and Antiquity of the Law,' &c. A second edition of this very valuable work was published in 1733; a third, with the proceedings in English, anno 1736; a fourth, in 1739; a fifth, in 1744; a sixth, in 1750; a seventh, in 1756; an eighth, in 1762; a ninth and tenth, 1772, 1782, with great additions and improvements by Owen Ruffhead and John Morgan, Esqrs., all in [one volume] folio; and an eleventh, in two volumes quarto, from the masterly hand of Thomas Edlyne Tomlins, Esq., anno 1797, which is greatly enlarged and improved by many material corrections and additions from the latest statutes, reports, and other accurate publications; in the whole explaining the rise, progress, and present state of the English law in theory and practice, defining and interpreting the terms and words of art, and comprising copious information, historical, political, and commercial, on the subjects of law, trade, and government." 1 Bridgman Leg. Bib. 169, 170. From this time the work began to be called by the name of its last editor, Tomlins; and now, even the name of Jacob does not appear upon the title-page. Jacob pilfered from other authors; and, as the Scriptures say, "He that taketh the sword shall perish by the sword." The last edition, I think, of this work, is announced in a London Catalogue before me, as follows: "Tomlins's (Sir T. E.) Law Dictionary, explaining the Rise, Progress, and Present State of the British Law; defining and interpreting the Terms or Words of Art, and comprising also copious Information on the subjects of Trade and Government, 4th ed. with extensive additions, embodying the whole of the recent Alterations in the Law. By T. C. Granger. 2 vols. 4to. 1835." This edition was re-issued in Philadelphia, the next year (1836), in 3 vols. 8vo.

Jebb's Criminal Cases; *Jebb;* Irish; 1 vol.; 1822–1840.
Jebb & Bourke's Reports; *Jebb & B.;* Irish Q.B.; 1 vol.; 1841, 1842.
Jebb & Symes's Reports; *Jebb & S.:* Irish Q.B.; 2 vols.; 1838–1841.
Jefferson's Reports; *Jefferson* (or *Jeff.*); Va.; 1 vol.; 1730–1740, and 1768–1772.
Jenkins's Eight Centuries of Reports; *Jenk. Cent.;* Eng.; 1 vol.; 1220–1623.[1]
Johnson's Reports; *Johns. Ch. Eng.;* Eng. Ch.; 1 vol.; 1858–1860.[2]
Johnson's Reports; *Johns.;* N.Y.; 20 vols.; 1806–1823.[3]
Johnson's Cases; *Johns. Cas.;* N.Y.; 3 vols.; 1799–1803.[4]
Johnson's Chancery Reports; *Johns. Ch.;* N.Y.; 7 vols.; 1814–1823.[5]
* Johnson's Reports. Same as *Maryland Chancery.*
Johnson & Heming's Reports; *Johns. & H.;* Eng. Ch.; 2 vols.; 1859–1862.
Jones on Bailments; *Jones Bailm.;* 1 vol.; Eng. and Am. reprint.[6]

[1] The fuller title is: "Eight Centuries of Reports; or, Eight Hundred Cases solemnly adjudged in the Exchequer Chamber, or upon Writs of Error." Bridgman observes, that these Reports "were originally published in French and Latin, by David Jenkins, a Welsh judge, in the reign of Charles I. This selection forms a series of authentic judgments, applicable to the more advanced state of the law in our author's time, he having omitted to notice the cases under the more obsolete titles, which make up so large a portion of the Year Books and general abridgments of the ancient law. The method observed is a concise statement of the case, and of the determination thereupon, with reference to the authority whence it is taken; then follows generally a short comment, explaining the principle of the doctrine therein contained, with such further observations as appeared necessary to illustrate the point of law resolved and there recorded as an absolute authority. This mode of reporting is peculiar to the author, whose reports may properly be considered as a commentary upon the judicial determinations of the former reigns, which is recommended by the learned author as an advantageous method to be pursued in the study of the law." He states the editions as follows: 1st, in French, 1661; 2d, in French, 1734; 3d, in English, translated by Theodore Barlow, with the addition of many references, and a table of principal matters, 1771 or 1777, folio. Bridgman Leg. Bib. 174, 175. "The volume is more in the nature of a digest than of reports; but it contains several cases not found in any other work." Wallace Reporters, 3d ed. 60. By whatever name we call the book, — whether digest, reports, or treatise, — it is highly esteemed, and often referred to. And see 1 Kent Com. 484.

[2] I have added the *Eng.* to the abbreviation to distinguish it from the New York *Johns. Ch.* Of course, an English writer would not employ this form.

[3] See ante, § 511. The title on the title-page is: "Reports of Cases argued and determined in the Supreme Court of Judicature, and in the Court for the Trial of Impeachments and the Correction of errors, in the State of New York."

[4] On the title-page: "Reports of Cases adjudged in the Supreme Court of Judicature of the State of New York, from 1799 to 1803; with Cases determined in the Court for the Correction of Errors, during that period." See ante, § 511.

[5] See ante, § 511.

[6] The author of this work was born in 1746, and died in 1794. Perhaps no law book was ever praised more uniformly and heartily than this; yet it is only a single

Jones's Law Reports; *Jones, N.C.;* N.C.; 8 vols.; 1853–1860.
Jones's Equity Reports; *Jones Eq.;* N.C.; 6 vols.; 1853–1860.
Jones's Pennsylvania State Reports; *Jones, Pa.;* Pa.; 2 vols.; 1849.[1]
Jones's Reports [Sir Thomas]; *Sir T. Jones* (or † 2 *Jones*); Eng. K.B. & C.P.; 1 vol.; 1667–1685.[2]
Jones's Reports [Sir William]; *W. Jones* (or † 1 *Jones*); Eng. K.B. & C.P.; 1 vol.; 1620–1641.[3]
Jones's Reports [Thomas]; *Jones, Ir.;* Irish, Ex.; 2 vols.; 1834–1838.
* Jones's Reports. Same as *Upper Canada C.P.*
* Jones's Reports. Same as 22–31 *Missouri.*
Jones & Carey's Reports; *Jones & C.;* Irish, Ex.; 1 vol.; 1838, 1839.[4]
Jones & La Touche's Reports; *Jones & La T.;* Irish, Ch.; 3 vols.; 1844–1846.
Judgments, Book of.[5]
Jurist, The; *Jur.;* Eng.[6]

thin volume, devoted to a subject of comparatively small extent. There have been several editions.

[1] Often referred to as 11, 12 *Pa. State.* See *Pennsylvania State.*

[2] These reports stand well. They "were first printed in French, anno 1695, in folio; and, secondly, in French and English, with the addition of many references, anno 1729, folio." Bridgman Leg. Bib. 180. In the old books, they are distinguished from the reports of Sir William Jones by being cited sometimes as 2 Jones, and sometimes as Ch. Just. Jones. And see Wallace Reporters, 3d ed. 217.

[3] "The name and title of Sir William Jones seems not to be confined to one man, nor to one age, in the great theatre of learning." This Sir William Jones, therefore, should not be confounded with the Sir William Jones who wrote the "Bailments," and various other legal and literary works. The reports seem, on the whole, to stand tolerably, but not excellently, well in professional estimation. There has never been but one edition, that of 1675, in French, folio. See Bridgman Leg. Bib. 179; Wallace Reporters, 3d ed. 185.

[4] I think this volume was never finished; only 2 parts, containing together 428 pages, having been published.

[5] There are two books, to be cited First Book of Judgments, and Second Book of Judgments, mentioned here merely to enable me to state to the inexperienced reader how they should be cited. The first is a 12mo., printed at London, 1655, entitled, "Judgments as they were upon Solemne Arguments given in the Upper-Bench and Common-Pleas, upon the most difficult Points in all Manner of Actions." The second is a small 4to entitled, "Second Book of Judgments in Real, Personal, and Mixt Actions, and upon the Statutes; all, or most of them, affirmed upon Writs of Error. Being the collection of George Huxley, out of choice manuscripts of Mr. Brownlowe, Mr. Moyle, and Mr. Smythier. Corrected by George Townesend. London, 1674."

[6] The Jurist is a law periodical containing reports of decisions in all the courts, together with legal articles, the statutes, and various other things. It was started in 1837, and continues down to 1867. At vol. 6 and subsequently, the reports are separated from the other matter, constituting a volume per year, and called part 1; while

§ 579. J. — Further Abbreviations.

J. J. Mar. J. J. Marshall's Reports. See *Marshall.*
J. Kel. J. Kelyng's Reports. See *Kelyng.*
Jac. The reign of King James.

§ 580. K. — Principal Collection.

Kansas Reports; *Kan.;* 1862 to the present time.[1]
Kay's Reports; *Kay;* Eng. Ch.; 1 vol.; 1853, 1854.
Kay & Johnson's Reports; *Kay & J.;* Eng. Ch.; 4 vols.; 1854, 1858.
Keble's Reports; *Keb.;* Eng. K.B.; 3 vols.; 1661–1679.[2]
Keen's Reports; *Keen;* Eng. Ch.; 2 vols.; 1836–1839.
Keilway's Reports; *Keilw.;* Eng. K.B. & C.P.; 1 vol.; 1496–1531.[3]
Kelly's Reports; *Kelly;* Ga.; 3 vols.; 1846, 1847.[4]
* Kelly & Cobb's Reports. Same as 4, 5 *Georgia.*
Kelyng's Reports [Sir John]; *J. Kel.* (or †1 *Kel.*); Eng. K.B. Pleas of the Crown; 1 vol.; 1662–1669.[5]

the other matter constitutes part 2 of the volume, bound separately. Thirteen volumes, from 1837 to 1854, constitute the first series, cited simply *Jur.;* and 13 volumes, extending to 1867, constitute the second series, cited *Jur.* N.S. To each volume is appended a general Digest of all the reports published in England during the year.

[1] Vols. 1–3 by Elliot V. Banks.

[2] These volumes are in English, black letter, folio. There has been but one edition, that of 1688. These reports are estimated somewhat differently by different persons, but nobody places them high, while some opinions have been very unfavorable. On the whole, they are not quite the worst of the old reports; neither are they, by a good deal, the best. See Bridgman Leg. Bib. 181; Wallace Reporters, 3d ed. 207.

[3] Ante, § 498. "These Reports, printed in French, 1602, 1633, and 1688, 'contain certain select cases temp. Hen. VII. and Hen. VIII. not comprehended in the Year Books,' with some few cases at the end by Mr. Justice Dalison, and Mr. Serjeant Benloe. The cases at the end, by Dalison & Benloe, are the same as those at the end of Ashe's Tables, but have the addition of a great many references. [See ante, § 562, *Benloe*, and note; § 566, *Dalison*, and note.] Keilway's Reports are sometimes quoted under the title *Croke*, having been selected and published by John Croke, Serjeant at Law, Recorder of London, and Speaker of the House of Commons, reign Eliz. 43, who was afterwards knighted and created a judge of the Court of King's Bench." Bridgman Leg. Bib. 181, 182. I think these reports have always been, on the whole, well esteemed; though, as is evident from their never having been translated into English, they are not deemed to be of the very highest interest.

[4] Constituting vols. 1–3 *Georgia*, by which title they are sometimes cited.

[5] See 1 Bishop Crim. Proced. § 1706. "Kelyng's Reports were published by

Kelynge's Reports [William]; *W. Kel.* (or †2 *Kel.*); Com. Law & Ch.; 1 vol.; 1731–1736.[1]
Kent's Commentaries; *Kent Com.;* 4 vols.; Am. Con.[2]
Kenyon's, Lord, Reports; *Keny.;* Eng.; 2 vols.; 1753–1760.[3]
Kernan's Reports; *Kernan* (or *Kern.*); N.Y.; 4 vols.; 1854–1856.[4]
Kerr's Reports; *Kerr;* N.B.; 3 vols; 1840–1848.
* Kerr's Reports. Same as 18–22 *Indiana.*
* King's Reports. Same as 5, 6 *Louisiana Annual.*
Kirby's Reports; *Kirby;* Conn.; 1 vol.; 1785–1788.
Knapp's Reports; *Knapp;* Eng. Priv. Council; 3 vols.; 1829–1836.
* Knowles's Reports. Same as 3 *Rhode Island.*

§ 581. K. — Further Abbreviations.

K.B. King's Bench.
* *K.C.R.* Reports temp. Chancellor King.[5]

Lord C. J. Holt, with notes and some references. See Foster's Crim. Law, 204." Bridgman Leg. Bib. 182. The volume is a thin folio; There have been but two English editions, alike except in the title-page, 1708, 1739. There is an 8vo. Dublin edition of 1789, with references and notes by Browne. Wallace Reporters, 3d ed. 209. This is truly an excellent and valuable old book.

[1] "Also, sometimes quoted as *Rep. of Sel. Cas. in Ch.;* likewise, as *Hardw.;* likewise as *Cases King's Bench temp. Lord Hardwicke.*" — Wallace Reporters, 3d ed. 316. The standing of this book in professional estimation is about as low as it is possible for any book of reports to be.

[2] See ante, § 304–306, 385.

[3] These reports are, on the whole, pretty well esteemed. Perhaps they are not of quite the highest order. And see Wallace Reporters, 3d ed. 278.

[4] Constituting vols. 11–14 *New York Reports*, by which title they are sometimes cited. See post, *New York.*

[5] There are two volumes containing reports of cases in the time of Chancellor King; the first published is the one now known and cited as *Select Cases in Chancery.* This appeared in 1740. Its title is: "Select Cases argued and adjudged in the High Court of Chancery, before the late Lords Commissioners of the Great Seal, and the late Lord Chancellor King. By a Gentleman of the Temple." It covers the period from 1724 to 1733. It is this volume, I believe, to which the abbreviation *K. C. R.*, occasionally found in the old books, refers. But in 1744 appeared Moseley's "Reports of Cases argued and determined in the High Court of Chancery during the time of Lord Chancellor King," covering the period from 1726 to 1730. The abbreviation, therefore, *K. C. R.*, or the fuller expression King's Chancery Reports, or Cases tempore Chancellor King, would at once be confounded with this publication by Moseley; therefore *Select Cases in Chancery* was adopted as the familiar name instead. This, I believe, is the explanation of the matter, though I have no "authority" at hand to cite for my statement.

§ 582. L. — Principal Collection.

† Lalor's Reports. Same as *Hill & Denio.*

Lambard's Eirenarcha, or Justice of the Peace; *Lamb. J. P.;* Eng.[1]

Lane's Reports; *Lane;* Eng. Ex.; 1 vol.; 1605–1612.[2]

Latch's Reports; *Latch;* Eng. K.B.; 1 vol.; 1625–1628.[3]

Law's Forms; *Law Forms;* 1 vol.; Eng. 2d ed.; 1844.[4]

Law Journal; *Law J.* (or *L. J.*); Eng.; reports of all the courts; 1823 to the present time.[5]

Law Library. This is a name given to a periodical reprint of English law treatises. All references, however, should be to the several treatises themselves.

Law Magazine; *Law Mag.;* a law quarterly; Eng.; 55 vols.; 1829–1856. Con. by Law Mag. & Rev.[6]

Law Reporter; *Law Reporter* (or *Law Rep.* or *Boston Law Rep.*); a law monthly; 27 vols.; 1838–1866.[7]

[1] Lambard is an old writer, whose works were formerly much read and consulted. See, for a list of them, Bridgman Leg. Bib. 184. The one specified in the text is perhaps the most known. Bridgman says, it was published in octavo, in "1581, 1582, 1588, 1591, 1592, 1594, 1599, 1602, and 1607; . . . but these editions often want the Office of Constable, and several of them vary in paging. And in 1610, 1614, and 1619, the same were again published in octavo; to which was added the 'Duty of Constables, Burseholders, Tything Men, &c.' Sir William Blackstone (Com. b. 1, c. 9) recommends this work to the perusal of students." It is not often, at the present day, that any of Lambard's books are so much as referred to.

[2] See Wallace Reporters, 3d ed. 173.

[3] This is a posthumous publication, inaccurate, and in all respects little esteemed. It was published in French, in 1662. There is no other English edition. In this country, there is a translation, by Martin, published at Newbern, N.C., 1793. See Wallace Reporters, 3d ed. 190. I think this edition is scarce; I never saw it.

[4] This book treats of the practice of the Ecclesiastical Courts. It consists of a translation into English of the first part of Oughton, with additions from various other sources. See post, *Oughton.*

[5] This is a periodical, consisting chiefly of reports of all the English Courts. A New Series begins with vol. 10; and this volume and the subsequent ones are sometimes cited vol. 1, &c., as of the new series; and sometimes vol. 10, &c., in continuation of the original numbering. The reports of cases from the different courts, or relating to different subjects, are printed under separate pagings; consequently every reference must state the court or subject. Thus, 15 Law J. N.S. Q.B. adding the page.

[6] In 1856 the Law Magazine was merged with a similar work called the Law Review, under the joint title of "The Law Magazine and Review." This periodical has always maintained an excellent standing. It is now, I believe, the only law *quarterly* published in England, though there are other legal periodicals.

[7] The last volume was never completed; the last number published being the one for May, 1866.

† Law Reporter. Same as *Law Times Reports. New Series.*

Law Reports; *Law Rep.;* to which must be added the number of the volume, and the abbreviation indicating the court; Eng. all the courts; 1865 to the present time.[1]

Law Reports; *N.S. Law Rep.;* N.S.; 1 vol.; 1834–1841.[2]

Law Review; *Law Rev.;* a law quarterly; Eng.; 23 vols.; 1844–1855. Con. by Law Mag. & Rev.[3]

Law Times; *Law T.* (or *L. T.*); Eng. periodical consisting mainly of reports from all the courts; 33 vols. fol.; 1845–1859.

Law Times Reports, New Series; *Law T. Rep.* N.S. (or *L. T. Rep.* N.S.); Eng. all the courts, with some cases from Ireland and Scotland; 1859 to the present time.[4]

Law on the Jurisdiction of the U.S. Courts; *Law Jurisd.;* 1 vol.; Am. 1852.

* Lawrence's Reports; Same as 20 *Ohio.*

Leach's Reports; *Leach;* Eng. crown law cases; 2 vols.; 4th ed. 1730–1815.[5]

[1] These reports were established by the bar of England, through what is called the "Counsel of Law Reporting," to supersede, if possible, all others, and thus furnish the profession with reports alike prompt, cheap, and reliable. The reports are distributed in unbound monthly parts, so arranged that purchasers may have them taken apart, and the pages devoted to the several courts bound each court by itself. When, therefore, the reports are finally bound, those of each court form a series independent of the rest. One series is called "The Law Reports, Queen's Bench;" another, "The Law Reports, Common Pleas," and so on. If a case in the Queen's Bench series, for example, is to be referred to, it is done as follows: First set down the name of the case, then say *Law Rep.*, then give the number of the Queen's Bench series, then say Q. B., and conclude with the number indicating the page. The equity reports are not arranged to be bound strictly each court by itself; but the chancery appeal cases form one series, and the others form another series; the former to be cited "*Law Rep.* [here insert the number of the volume] *Chy. Ap.*"; the latter, "*Law Rep. Eq.*" Probably, in time, these abbreviations will become almost of necessity somewhat contracted; as, for instance, *L. R.* 25 *Ch.; L. R.* 30 *Eq.; L. R.* 28 *Q. B.;* or, perhaps, at last, simply 50 *Ch.;* 60 Eq.; 75 Q. B. But, if we should now say 8 *Q. B.*, the reference would be understood as directing us to the series previously known as the "Queen's Bench Reports."

[2] These reports are by James Thompson. They should not be confounded with another volume of reports, by the same author, covering the period from 1856 to 1859, and cited under the name of the reporter.

[3] See note 6, preceding page.

[4] Another title of these reports is "Law Reporter."

[5] The first edition was, I believe, in 1789; the second, in 1792; the third, in 1800. Each edition brings the cases down to the date of its publication. The paging of the editions differs, and each is in various respects an improvement on its predecessors. Every reference to this book should mention the edition. These reports are highly esteemed.

† Leading Cases in Equity; Same as *White & Tud. Lead. Cas.*
Lee's Reports; *Lee;* Eng. Ec.; 2 vols.; 1752–1758.[1]
* Lee's Reports. Same as 9–12 *California.*
* Lee's Reports. Same as *Cases tempore Hardwicke.*
Leigh's Reports; *Leigh;* Va.; 12 vols.; 1829–1842.
Leigh & Cave's Reports; *Leigh & C.;* Eng. Crown Cases; 1 vol.; 1861–1865.
Leonard's Reports; *Leon;* Eng.; 4 parts [1 vol.]; 1540–1615.[2]
Levinz's Reports; *Lev.*; Eng.; 3 parts; 1660–1697.[3]
Lewin's Crown Cases; *Lewin;* Eng.; 2 vols.; 1822–1838.
Ley's Reports; *Ley;* Eng. Court of Wards, &c.; 1 vol.; 1608–1629.[4]
Lilly's Reports; Lilly. (or *Lil.* or *Lill.*); Eng. Assizes; 1 vol.[5]
Littell's Reports; *Litt.;* Ky.; 5 vols.; 1822–1824.
Littell's Selected Cases; *Litt. Sel. Cas.;* Ky.; 1 vol.; 1795–1821.
Littleton's Reports; *Littleton* (or * *Litt.* or * *Lit.*); Eng. C.B. and Ex.; 1 vol.; 1626–1632.[6]

[1] These are reports, by Joseph Phillimore, of cases determined by Sir George Lee. But they are cited by the name of Lee, not of Phillimore. There are other ecclesiastical reports cited as Phillimore.

[2] Published, "first, in 1658; and, secondly, by William Hughes, with Tables and the addition of many thousand references, in 1687, folio." Bridgman Leg. Bib. 191. The professional estimation of these reports has always been good. I am not aware that there has ever been any difference of opinion on this point. The publication, however, was posthumous.

[3] "First published in French, anno 1702, folio; secondly, in two volumes folio, anno 1722; and, thirdly, in French and English, translated by Mr. Serjeant Salkeld, and carefully corrected, with many thousand references, and the pleadings translated by T. Vickers, in 1802, two volumes octavo." Bridgman Leg. Bib. 192. This statement of Bridgman, however, is not quite accurate, except as to the first edition. The second edition, published 1722, has Mr. Salkeld's translation printed side by side with the original. In a copy before me, the whole is bound in one volume. Another copy before me is of the third edition; its date is 1802, it is in three volumes, and consists of the English translation without the French. I think there is no later edition; but perhaps the dates on the title-pages of the same edition, or of Dublin reprints of the same, may differ. The standing of these reports is fair, but not high.

[4] This is a thin volume of cases which are perhaps good, but it is seldom referred to. And see Wallace Reporters, 3d ed. 175.

[5] This volume was published in 1719, some years after Lilly's death. "There are but seven cases in the whole book, which appears to have been published principally to let the editor [William Nelson] discharge himself of the burden of a long, rambling, and nonsensical preface, which occupies a fifth part of the volume. The book is now very scarce, probably only because it was always very worthless." Wallace Reporters, 3d ed. 260.

[6] The abbreviation *Litt.* or *Lit.* should be avoided in this country, as conflicting with *Litt.* for Littell. It might also be mistaken for a reference to Littleton's Tenures. These reports are nearly valueless, — seldom referred to. There is but

Littleton's Tenures.[1]

Livingston's Judicial Opinions; *Liv. Jud. Op.;* New York city, Mayor's Court; 1802.[2]

Lloyd & Goold's Reports tempore Sugden; *Ll. & G. temp. S.;* Irish, Ch.; 1 vol.; 1835, 1836.

Lloyd & Goold's Reports tempore Plunket; *Ll. & G. temp. P.;* Irish, Ch.; 1 vol.; 1834–1839.

Lloyd & Welsby's Mercantile Cases; *Ll. & W. Mer. Cas.;* Eng. all the courts; pub. 1830.

Lofft's Reports; *Lofft;* Eng.; 1 vol.; 1771–1773.[3]

Longfield & Townsend's Reports; *Longf. & T.* (or *L. & T.*); Irish, Ex.; 1 vol.; 1841, 1842.

Louisiana Reports; *La.;* 19 vols.; 1830–1841.[4]

Louisiana Annual Reports; *La. An.;* La.; 1846 to the present time.[5]

Lower Canada Jurist; *L. C. Jur.;* 1857 to the present time.

Lower Canada Reports; *L. Canada* (or *L. C.*); 1850 to the present time.

Lowndes, Maxwell, & Pollock's Reports; *L. M. & P.;* Eng. Bail Court; 2 vols.; 1850, 1851.

* Lucas's Reports. Same as 10 *Modern.*

* Ludden's Reports. Same as 43, 44 *Maine.*

Lushington's Reports; *Lush.;* Eng. Adm.; 2 vols.; 1860–1865.

Lutwyche's Reports; *Lutw.;* Eng. C. P.; 2 vols.; 1682–1704.[6]

* Lutwyche's Reports. Same as 11 *Modern.*

one edition, it is in French, and was published in 1688,—a posthumous little work. And see Wallace Reporters, 3d ed. 192.

[1] See ante, § 283, 284, 414, 513.

[2] Published anonymously — not of any real value. 1 Abbott's N.Y. Dig. Pref. xviii.

[3] Published in folio, 1776. There is an octavo Dublin edition of 1790. It is universally regarded as a very poor book. And see Bridgman Leg. Bib. 205; Wallace Reporters, 3d ed. 328, note.

[4] Vols. 1–5, by Branch W. Miller; 6–19, by Thomas Curry.

[5] Vols. 1–4, by Merritt M. Robinson; 5, 6, by William W. King; 7–11, by W. M. Randolph; 12–15, by A. N. Ogden; 16–18, by S. F. Glenn. In Louisiana, these reports are cited simply as *An.* But out of the State it is necessary, as it is usual, to prefix the *La.*, else the meaning would not be understood.

[6] "The 'Reports and Entries' of Sir Edward Lutwyche were first published in 1704, in Latin and French, two volumes folio. Afterwards, in 1718, they were translated, with observations, and published in folio by William Nelson, Esq., and in the same year they were published in two volumes octavo in English." Bridgman Leg. Bib. 207. Lutwyche's Reports, in the original, are highly esteemed; but Nelson's translation and notes meet with little favor. "Though Nelson called his book Lutwyche's Reports and Entries, it is, in fact, but an abridgment of the former without any insertion of the latter; and its value as a substitute for Lutwyche is almost destroyed by want of some reference to the paging of the original work." Wallace Reporters, 3d ed. 245.

§ 583. L. — Further Abbreviations.

Ld. Raym. Lord Raymond's Reports. See *Raymond.*
† *Lib. Ass.* Same as *Ass.* Book of Assizes.[1]
Lib. Int. Same as *Int. Lib.* Intrationum Liber.[2]

§ 584. M. — Principal Collection.

* Macclesfield's Reports. Same as 10 *Modern.*
Mackenzie's Institutes; *Mack. Inst.;* Scotch.[3]
Maclean & Robinson's Reports; *Macl. & R.;* House of Lords on Appeal principally from Scotland; 1 vol.; 1839.
* Macnaghten's Reports. Same as *Select Cases in Chancery.*[4]
Macnaghten & Gordon's Reports; *Macn. & G.;* Eng. Ch.; 3 vols.; 1849–1851.
MacNally's Rules of Evidence on Pleas of the Crown; *MacN. Ev.,* Eng.; 1802.
Macqueen's Parliamentary Practice; *Macq. Parl. Pract.;* Eng., 1842.
Macqueen's Scotch Appeal Cases; *Macq. Ap. Cas.;* H. of L. Ap. from Scotland; 4 vols.; 1851–1862.
Maddock's Reports; *Mad.;* Eng. Ch.; 5 vols.; 1815–1821.
Maddock's Principles & Practice of Chancery; *Mad. Ch. Pr.;* 2 vols.; Eng. 1815.
Maddock & Geldart's Reports; *Mad. & G.;* Eng. Ch.; 1 vol.; 1821, 1822.
Magistrate, The; *The Magistrate;* Eng.; 5 vols.; 1848–1853.[5]
* Magruder's Reports. Same as 1, 2 *Maryland.*
Maine Reports; *Maine;* cited so after *Fairf.;* 1836 (vol. 13) to the present time.[6]
* Manning's Reports. Same as 1 *Michigan.*

[1] See ante, § 561.

[2] See ante, § 576.

[3] This is an old work of considerable value, often referred to by Scotch legal authors. It, with some other legal productions of importance, may be found in Mackenzie's Works, 2 vols. fol. Edinburgh, 1716–1722.

[4] And see ante, § 581, *K. C. R.* note.

[5] Vol. 1, by Adam Bittleston and Edw. W. Cox; vols. 3–5, by Bittleston.

[6] The earlier reports of this State are Greenleaf's, 9 vols.; and Fairfield's, 3 vols. The rest, cited as Maine Reports, are vols. 13–18, by John Shepley; 19, 20, by John Appleton; 21–30, by John Shepley; 31–35, by Asa Redington; 36–40, by Solyman Heath; 41, 42, by John Milton Adams; 43, 44, by Timothy Ludden; 45–51, by Wales Hubbard; 52, 53, by Wm. Wirt Virgin. Though Shepley's Reports are the first which were originally known as Maine Reports, we now sometimes see

Manning & Granger's Reports; *Man. & G.;* Eng. C. P.; 7 vols.; 1840–1844.

* Manning, Granger, & Scott's Reports. Same as 1–8 *Common Bench.*

Manning & Ryland's Reports; *Man. & R.* (or *M. & R.*); Eng. K. B.; 5 vols.; 1827–1830.

Manning & Ryland's Magistrates' Cases; *Man. & R. M. C.* (or *M. & R. M. C.*); Eng. K. B.; 2 vols.; 1827–1829.

* Manning & Scott's Reports. Same as 9 *Common Bench.*

March's New Cases; *March;* Eng.; 1 vol.; 1639–1643.[1]

Marriott's Reports; *Marriott;* Eng. Adm.; 1 vol.; 1776–1779.

* Marshall's Reports. Same as *Brockenbrough.*

Marshall's Reports; *Marshall* (or †*Marsh.*); Eng. C. P.; 2 vols.; 1813–1816.

Marshall's Reports [A. K.]; *A. K. Mar.* (or †*Marsh.*); Ky.; 3 vols.; 1817–1821.

Marshall's Reports [J. J.]; *J. J. Mar.* (or †*J. J. Marsh.*); Ky.; 7 vols.; 1829–1832.

* Martin's Reports. Same as 21–29 *Georgia.*

Martin's Reports; *Mart. N. C.;* N. C.; 2 vols.; 1790–1796.[2]

Martin's Reports; *Mart. La.;* La.; 12 vols.; 1809–1823.

Martin's Reports, New Series; *Mart.* N. S.; La.; 8 vols.; 1823–1830.[3]

Martin & Yerger's Reports; *Mart. & Yerg.;* Tenn.; 1 vol.; 1825–1828.

Marvin on Wreck and Salvage; *Marvin Wreck & Salv.;* 1 vol.; Am.

Maryland Chancery Decisions; *Md. Ch.;* Md.; 4 vols.; 1847–1854.[4]

Maryland Reports; *Md.;* 1851 to the present time.[5]

Greenleaf's cited as 1–9 Maine, and Fairfield's as 10–12 Maine. They are so cited, for example, in Eastman's Digest, and so in some of the later Maine Reports. The "Advertisement" to vol. 13 Maine states, that it was so named pursuant to a resolve of the legislature, approved March 31, 1836, as follows: "Each volume of the Reports of the decisions of the Supreme Judicial Court of this State, subsequent to the third volume of Fairfield's Reports, shall be entitled and lettered upon the back thereof, Maine Reports; and the first volume, subsequent to the third volume of Fairfield's Reports, shall be numbered the thirteenth volume of Maine Reports."

[1] This volume should not be confounded with March's translation of Brooke's New Cases, mentioned ante, § 562, *Brooke,* note. These reports do not stand very high, yet they are deemed to be much better than the poorest. See Wallace Reporters, 3d ed. 197. They were "first printed in 1648; and, secondly, with a Table of the Principal Matters, and a new Title, in quarto, anno 1675." Bridgman Leg. Bib. 212. It is a small book in size, as well as in quality.

[2] Sometimes cited as *North Carolina Cases.*

[3] In Louisiana, often cited simply *N.S.*, — a form which would not be understood out of the State.

[4] By Chancellor Johnson.

[5] Vols. 1, 2, by A. C. Magruder; 3–18, by Oliver Miller; 19–22, by Nicholas Brewer.

Mason's Reports; *Mason;* U. S. 1st Circuit; 5 vols.; 1816–1830.
Massachusetts Reports; *Mass.;* 17 vols.; 1804–1822.[1]
* Matson's Reports. Same as 22–24 *Connecticut.*
Maule & Selwin's Reports; *M. & S.* (or *Maule & S.*); Eng. K.B.; 6 vols.; 1813–1817.[2]
May's Parliamentary Law; *May Parl. Law;* 1 vol.; Eng. Con.
McAllister's Reports; *McAl.;* U.S. Cir. for Cal. Dist.; 1 vol.; 1855–1859.
McCleland's Reports; *McClel.;* Eng. Ex.; 1 vol.; 1824.
McCleland & Younge's Reports; *McClel. & Y.;* Eng. Ex.; 1 vol.; 1824, 1825.
* McCook's Reports. Same as 1 *Ohio State.*
McCord's Law Reports; *McCord* (or *McC.*); S.C.; 4 vols.; 1821–1828.
McCord's Chancery Cases; *McCord Ch.* (or *McC. Ch.*); S.C.; 2 vols.; 1825–1827.
McLean's Reports; *McLean;* U.S. 7th Circuit; 5 vols.; 1829–1853.
McMullan's Law Reports; *McMullan;* S.C.; 2 vols.; 1835–1842.
McMullan's Equity Cases; *McMullan Eq.;* S.C.; 1 vol.; 1827–1842.
Meeson & Welsby's Reports; *M. & W.;* Eng. Ex.; 16 vols.; 1836–1847.
Meigs's Reports; *Meigs;* Tenn.; 1 vol.; 1838, 1839.
Merivale's Reports; *Meriv.;* Eng. Ch.; 3 vols.; 1815–1817.
Metcalf's Reports; *Met.;* Mass.; 13 vols.; 1840–1847.
Metcalfe's Reports; *Met. Ky.;* Ky; 4 vols.; 1858–1863.[3]
Michigan Reports; *Mich.;* 1847 to the present time.[4]
Miles's Reports; *Miles;* Pa.; 2 vols.; 1835–1840.
Mill's Constitutional Court Reports (Mill was only the publisher); *Mill;* S.C.; 2 vols.; 1817, 1818.[5]
* Miller's Reports. Same as 1–5 *Louisiana.*
* Miller's Reports. Same as 3–18 *Maryland.*
Milward's Court of Prerogative Reports; *Milward* (or *Milw.*); Irish; 1 vol.; 1816–1843.

[1] Vol. 1, by Ephraim Williams, the rest by Dudley Atkins Tyng. Five series of reports succeed these, — by Pickering, by Metcalf, by Cushing, by Gray, and by Allen, — all cited by the names of their respective reporters. It is now provided by Stat. 1867, c. 239, that "the volumes of reports of the decisions of the Supreme Judicial Court, next succeeding the series edited by Charles Allen, shall be styled 'Massachusetts Reports,' without the name of the reporter thereof added thereto, and the numbering of the several volumes shall be determined by reckoning all the previous volumes of reports as 'Massachusetts Reports.'" While I am reading this in the proof, I learn that there is a movement being made before the legislature to repeal or modify this statute.

[2] As to the form of the abbreviation, see ante, § 508, 509.

[3] See, as to the form of the citation, ante, § 505, 508, 509.

[4] Vol. 1, by Randolph Manning; 2–4, by George C. Gibbs; 5–12, by Thomas M. Cooley; 13, by Elijah W. Meddaugh; 14, 15, by William Jennison.

[5] See ante, § 500, 564, *Constitutional Reports, New series,* note.

Minnesota Reports; *Minn.*; 1851 to the present time.[1]
Minor's Reports; *Minor*; Ala.; 1 vol.; 1820–1826.[2]
Mirror of Justices; *Mirror of Justices* (or *Mirror*, or *The Mirror*).[3]
Mississippi Reports; *Missis.* (or *Miss.* or *Mi.*); 1850 (vol. 23) to the present time.[4]

[1] Vols. 1–9, by Harvey Officer; 10, 11, by William A. Spencer.

[2] See ante, § 560, *Alabama*, note.

[3] This is one of the very old and celebrated law books, which have come down to us bringing with them no certain and exact information concerning their source. The title of the book, as printed at London in 1768, being, I believe, the last edition, is as follows: "Mirror of Justices; written originally in the Old French, long before the Conquest; and many things added, by Andrew Horne. To which is added, The Diversity of Courts and their Jurisdiction. Translated into English, by W. H." Bridgman says, This book is sometimes "attributed to Andrew Horne, but by others that fact is doubted." And he gives us the following statement concerning it: "It was translated into English by William Hughes, and published first in 1642, secondly in 1646, thirdly in 1649, in 12mo, and fourthly in 1768, in octavo, to which is added 'The Diversity of Courts and their Jurisdiction.' The first edition of this work, in 1642, was printed from an ancient copy belonging to Francis Tate, Esq., collated and examined with an old copy in *Bennet Col. Camb.* Lord Coke, in prefaces to 9 and 10 Rep., says, that in this Mirror you may perfectly and truly discern the whole body of the common laws of England; and, further, the most of it was written long before the Conquest, as by the same appeareth, and yet many things were added thereunto by Horne, a learned, discreet man (as it is supposed), in the reign of Edward I. On the other hand, Horne is reputed to be very little better than an impostor, by the learned Doctor Hicks, in his *Dissert. Epist. ad Thesaur. vet. Ling. Septent.*, page 42. A modern writer, however, suggests a solution, which seems to reconcile the apparent inconsistencies of these opinions, from the probability of the existence of a work of this title as ancient as the date supposed by Lord Coke, which Horne might incorporate and model into the work now in our hands, with such additions thereto as he thought proper to make. It is observed that, whatever claim to antiquity it may possess, a great part of it is certainly written since Fleta and Britton, and it is accordingly generally ascribed to the Reign of Edward II. Vide Reeves's Hist. Eng. Law, II. 358. Some have imagined that the Mirror of Justices was composed by Mr. Horne, from an old law tract, mentioned by Dugdale (in *Orig. Jurid.* c. 23), called 'Speculum Justiciariorum,' which is not now extant. But from whatsoever source it may have been taken, it is found to treat generally of all branches of the law of that time, civil and criminal; and it is, notwithstanding the above objections, a curious, interesting, and in a certain degree an authentic tract upon our old law. With respect to the title, though it may appear somewhat singular, yet Mr. Barrington (*Obs.* 1, 4th ed.) gives a curious account of the remarkable coincidence of several nations of Europe, in adopting this title to their early law books." Bridgman Leg. Bib. 161–168.

[4] Vols. 28–29, by John F. Cushman; 30–39, by James Z. George; 40, by R. O. Reynolds. The preceding 22 volumes are in three series, by Walker, by Howard, and by Smedes & Marshall. But they are cited, not by the name, "Mississippi Reports," but by the names of the reporters. The abbreviation *Missis.* which I use, is perhaps not so well established by custom as the other forms. But those others are indistinct or liable to be mistaken for something else.

Missouri Reports; *Misso.* (or *Mis.* or *Mo.*); 1821 to the present time.[1]

* Modern Cases. Same as 2 *Modern*, as 6 *Modern*, as 8 *Modern*, and as 9 *Modern*.

Modern Reports; *Mod.;* Eng.; 12 vols.; 1669-1732.[2]

Molloy's Reports; *Mol.;* Irish, Ch.; 3 vols.; 1827–1829.[3]

Monroe's Reports [B.]; *B. Monr.* (or *B. Mon.*); Ky.; 18 vols.; 1840–1857.

Monroe's Reports [Thomas B.]; *T. B. Monr.* (or *T. B. Mon.*, or *Monroe*, or *Mon.*); Ky.; 7 vols. [bound in 6]; 1824–1828.[4]

Montagu's Bankruptcy Reports; *Mont.;* Eng. Ch.; 1 vol.; 1829–1832.

[1] The first 3 volumes are, in the edition now current, bound in one. Vol. 4, by W. B. Napton; vols. 5–8, by S. M. Bay; 9–11, by B. F. Stringfellow; 12, 13, by Wm. A. Robards; 14, 15, by Jas. B. Gardenhire; 16–21, by Samuel A. Bennett; 22–30 and a part of 31, by Horatio M. Jones; the remainder of 31 in part, and 32, by Chas. C. Whittelsey; 35–39 (perhaps preceding volumes also) by Whittelsey. The abbreviation *Misso.*, which I use, is not perhaps quite so well established by custom as the other forms, but it is much to be preferred.

[2] Only the first five of the twelve volumes of Modern were known, at the time of their original publication, by that name. Vol. 6 was known and cited as *Modern Cases;* vol. 7 was called by the name of its reporter, Thomas *Farresley;* vol. 8 was 2 *Modern Cases;* vol. 9 was *Equity Cases* (vols. 8 and 9, however, originally appeared together bound under one cover, and the whole was sometimes cited as *Modern Cases in Law and Equity*, for so upon the title-page the whole volume was called); vol. 10 was cited as *Cases temp. Macclesfield*, or as *Lucas's* Reports, after the name of its reporter, Robert Lucas, or Cases in Law and Equity, abbreviated *Cas. L. Eq.;* vol. 11 was *Reports Q. A.*, or *Cases temp. Queen Anne*, known also under the name of T. Lutwyche; and vol. 12 was *Cases, B. R.*, or *Cases temp. Will.* III. The folio edition of 11 Modern, of 1781, together with the Dublin 8vo edition, which was reprinted from this, contains a considerable number of cases not to be found in Leach's edition, as the latter contains, also, cases not to be found in the former. In respect to the other volumes, Leach's is the most complete, as well as the standard edition. It is the fifth, published at London, 1796. In looking at the reputation, or professional standing, of these reports, it is necessary to consider each volume by itself. They are reputed to have all degrees and grades of merit and demerit. Mr. Wallace has discussed them amply in his book of "The Reporters," and I need not here go over the ground. See Wallace Reporters, 3d ed. 219–241.

[3] Only one part of vol. 3 was ever published.

[4] These reports of T. B. Monroe's having been published before those by B. Monroe, the single word Monroe, or its abbreviation *Monr.*, was originally employed to designate them. The consequence is, that they are still cited, by many writers, simply as Monroe; while, of course, all writers cite the other series as *B. Monr.* And see ante, § 508, 509. "The 2d vol. of T. B. Monroe's Reports contains the opinions delivered by the judges of the 'New Court of Appeals,' a tribunal created by the act of the General Assembly passed in 1824, and subsequently declared to be in violation of the constitution; and are not regarded as authority in any of the courts of this State." 1 Monr. & Harlan's Dig. pref. iv.

Montagu & Ayrton's Bankruptcy Reports; *Mont. & A.;* Eng. Ch.; 3 vols.; 1833–1838.

Montagu & Bligh's Bankruptcy Reports; *Mont. & B.;* Eng. Ch.; 1 vol.; 1832, 1833.

Montagu & Chitty's Bankruptcy Reports; *Mont. & C.;* Eng. Ch.; 1 vol.; 1838–1840.

Montagu, Deacon, & De Gex's Bankruptcy Reports; *Mont. D. & De G.;* Eng. Ch.; 3 vols.; 1840–1844.

Montagu & Macarthur's Bankruptcy Reports; *Mont. & M.;* Eng. Ch.; 1 vol.; 1826–1830.

Moody's Crown Cases Reserved; *Moody;* Eng.; 2 vols.; 1824–1844.[1]

Moody & Malkin's Nisi Prius Cases; *Moody & M.;* Eng.; 1 vol.; 1826–1830.

Moody & Robinson's Nisi Prius Cases; *Moody & R.;* Eng.; 2 vols.; 1830–1844.

Moore's Reports [John Bayly]; *Moore* (or *J. B. Moore*); Eng. C.P.; 12 vols.; 1817–1827.

Moore's Reports [E. F.]; *Moore P. C.* (or *E. F. Moore*); 14 vols.; 1836–1861.

Moore's Reports [Sir Francis]; *Sir F. Moore* (or *Mo.*); Eng. K.B., C.P., & Ex.; 1 vol.; 1512–1621.[2]

Moore & Payne's Reports; *Moore & P.;* Eng. C.P. & Ex.; 5 vols.; 1827–1831.

Moore & Scott's Reports; *Moore & S.;* Eng.; 4 vols.; 1831–1834.[3]

Morris's Reports; *Morris;* Iowa; 1 vol.; 1839–1845.

* Morris's Reports. Same as 5 *California.*

Morrison's Dictionary of Decisions; *Mor. Dict.* (or *Mor.* or † *M.*); Scotch; 22 vols.; 1540–1808.[4]

Moseley's Reports; *Moseley* (or *Mos.*); Eng. Ch.; 1 vol.; 1726–1730.[5]

Munford's Reports; *Munf.;* Va.; 6 vols.; 1810–1820.

Murphy's Reports; *Murph.;* N.C.; 3 vols.; 1804–1819.

Murphy & Hurlstone's Reports; *Murph. & H.;* Eng. Ex.; 1 vol.; 1837.

[1] The first 97 pages of the first volume were in fact prepared by Ryan & Moody jointly, and this circumstance has caused the volume to be sometimes incorrectly cited as Ryan & Moody's Crown Cases, abbreviated *R. & M. C. C.*

[2] These reports have always been in high repute. They are in French; the only translation into English being an abridged one by William Hughes, published in 1665.

[3] As to the form of the abbreviation, see ante, § 508, 509.

[4] See ante, § 216.

[5] See ante, § 581, *K. C. R.* note. The opinions concerning these reports are a little discordant; but, on the whole, we may deem them to stand fairly well, though not high. See Wallace Reporters, 3d ed. 315.

Mylne & Craig's Reports; *Myl. & C.*; Eng. Ch.; 5 vols.; 1835–1841.
Mylne & Keen's Reports; *Myl. & K.*; Eng. Ch.; 3 vols.; 1822–1835.

§ 585. M. — Further Abbreviations.

Mary (or *M.*) The reign of Queen Mary.
Mich. T. (or *M. T.*) Michaelmas Term.

§ 586. N. — Principal Collection.

* Napton's Reports. Same as 4 *Missouri*.
Nelson's Reports; *Nelson* (or *Nel. C.R.* or *Nel.*); Eng. Ch.; 1 vol.; 1625–1693.[1]
Nevile & Manning's Reports; *Nev. & M.*; Eng. K.B.; 6 vols.; 1832–1836.
Nevile & Perry's Reports; *Nev. & P.*; Eng. K.B.; 3 vols.; 1836–1838.
Newberry's Admiralty Reports; *Newb.*; U.S. various Dist. Cts.; 1 vol.; 1842–1857.
New Hampshire Reports; *N.H.*; 1816 to the present time.[2]
* New Jersey Reports.[3]
* New Jersey Equity Reports.[4]

[1] The following is the fuller title: "Reports of Special Cases argued and decreed in the Court of Chancery, in the reigns of Charles I., Charles II., and William III." The volume is of the octavo size; there has been but one edition, published in 1717. The "Reports tempore Finch" are sometimes, but not quite correctly, cited as Nelson's folio Reports; therefore those mentioned here in the text, properly cited as Nelson simply, are sometimes cited as Nelson's octavo Reports, to distinguish them from the others. And see Wallace Reporters, 3d ed. 296. Nothing which Nelson wrote or compiled, pertaining to the law, has ever been much esteemed, or deserved to be; and, I think, these reports stand about on a par with the other productions of his pen.

[2] Vol. 1, by Nathaniel Adams; 2, by William M. Richardson and Levi Woodbury; 3–18, anonymous; 19, by William L. Foster; 20, by William E. Chandler; 21–31, by William L. Foster (usually cited under the name of the reporter, as to which, however, see ante, § 570, *Foster*, note); 32–37, by George G. Fogg; 38–44, by William E. Chandler; 45, 46, by Amos Hadley.

[3] The first 3 vols. of Zabriskie were originally lettered on the back 1, 2, 3 New Jersey Reports, and they have been sometimes so cited. Dutcher, vol. 5, is also, upon the page preceding the title, numbered New Jersey Reports, vol. 29. In like manner the two volumes of Vroom's Reports are in the same place numbered 30 and 31 New Jersey.

[4] Beasley, vol. 2, is lettered, on the page preceding the title, vol. 13 New Jersey Equity Reports; and McCarter's two volumes are in the same way numbered 14 and 15 New Jersey Equity Reports.

New Magistrate Cases; *New Mag. Cas.;* Eng. all the sup. courts; 3 vols. 1844–1849.[1]

New Practice Cases; *New Pr. Cas.;* Eng.; 2 vols.; 1844–1847.[2]

New Reports; *New Rep.* (or *N. R.*); Eng.; 2 vols.; 1804–1807.[3]

New Sessions Cases; *New Sess. Cas.;* Eng. Mag. Cas. in all the Superior Courts; 4 vols.; 1844–1851.[4]

† New York City Hall Recorder. Same as *City Hall Recorder.*

New York Legal Observer; *N. Y. Leg. Obs.;* a law monthly; 12 vols.; 1842–1854.

New York Reports; *N. Y.;* N. Y. Court of Appeals; 1857 (vol. 15) to the present time.[5]

[1] Vols. 1 and 2, by Adam Bittleston and Edward Wise, 8vo.; vol. 3, by Bittleston and Paul Parnell, 4to.

[2] The fuller title is: "New Practice Cases, together with Cases in Evidence, Stamps, and the Law of Attorneys and Solicitors."

[3] These reports are by Bosanquet & Puller, by whose names they are sometimes cited, as vols. 4, 5 *B. & P.* See ante, § 562, *Bosanquet & Puller*, note.

[4] Vol. 4 was never finished; part 4 of it being the last. Vols. 1 and 2 are by J. M. Carrow, J. Hamerton, and T. Allen; 3, by J. Hamerton, T. Allen, and C. Otter; 4, by C. G. Prideaux and H. T. Cole.

[5] The first volume which was called New York Reports was numbered fifteen. It contained the following explanatory note: "This volume will be lettered and numbered 'New York Reports Vol. 15.' It takes its place in a series consisting of four volumes of Comstock's Reports, five of Selden's, three of Kernan's, and soon to be augmented by a sixth of Selden's and a fourth of Kernan's, now in press. These will complete the reports of cases argued in the Court of Appeals, from its organization to the present time. The reporter believes himself to be complying with a very general wish of the profession, in making this change in the title of the Reports of the Court of last resort. The catalogue of reporters has already become so numerous as to render the order of their succession, and the distribution of them among the respective States, a serious burden to the memory." The subsequent volumes of New York Reports, including this vol. 15, are by the following reporters: 15–27, by E. Peshine Smith; 28–36, by Joel Tiffany. The volumes preceding vol. 15 are sometimes cited now as New York Reports; but, as their lettering and their title-pages do not show their numbers according to this new method of citation, it is most convenient and every way best to adhere to the style previously established. The reputation of these reports out of the State is, though they contain the decisions of the highest court of the most populous and most commercial State in our Union, necessarily low. The court is a political one, composed of judges periodically elevated to their high posts by reason of political services rendered to party; their pay is small; they are obliged constantly to bear on their minds a coming contest for re-election: it is wonderful, in short, how any respectable lawyer ever should, as some respectable lawyers do, occupy this bench; and more wonderful how any decisions, except in the plainest cases, should be found to be right, as some of the decisions of this court certainly are. The time once was, when some of the best legal expositions, as given from the bench, to be found in the entire country, came from the courts of this State. Let us hope that the return of this time, or the advance to a brighter one, may be speedily witnessed. And see ante, § 562, *Barbour*, note.

* New York Term Reports. Same as *Caines.*
* Nicholl, Hare, & Carrow's Reports. Same as 1, 2 *Railway & Canal Cases.*
* North Carolina Cases. Same as *Martin, N.C.*
North Carolina Term Reports; *N.C. Term R.;* N.C.; 1816–1818.[1]
Notes of Cases in the Ecclesiastical and Maritime Courts; *Notes Cas.;* Eng.; 7 vols.; 1841–1850.
Nott & McCord's Reports; *Nott & McC.* (or *N. & McC.* or * *N. & M.*); S.C.; 2 vols.; 1817–1820.
Noy's Maxims; *Noy Max.;* Eng.[2]
Noy's Reports; *Noy;* Eng.; 1 vol.; 1559–1649.[3]

§ 587. N. — Further Abbreviations.

† *N. Benl.* New Benloe.[4]
N. Chip. Nathaniel Chipman's Reports.[5]
* *N. L.* Nelson's Lutwyche.[6]
N. P. Nisi Prius.
N. S. New Series.[7]

What is thus said of this court is, I am aware, more or less true also of the highest courts of some of the other States, in recent times, wherein demagogism has wrought mischief in the judicial system as well as in all other things pertaining to the welfare of the country. Yet there is probably no State in which the general evil is more rampant, or party politics more corrupt, than in New York. Certainly there is none in which juridical degeneracy is more visible. At the same time, there are always to be found on the New York bench more or less estimable men, and men of real ability both of the legal and general sort.

[1] This is the second of two volumes of North Carolina decisions, reported by John Louis Taylor, and it is sometimes cited as 2 Taylor. The first volume of Taylor does not immediately precede this in point of date, but it covers the period from 1798 to 1802.

[2] This is an old book of considerable repute, but not much used now. The last English edition is, I think, the one published in 1821. See ante, § 562, *Branch*, note; § 574, *Hening*, note.

[3] Noy was a man of ability, Attorney-General to Charles I. But these reports were not published by him. "In fact," says Mr. Wallace, "there is ground to suppose that the book is an imposture, or at best but an imperfect abridgment of Noy's Note Book, by one of his students." At all events, the standing of the book, as a legal authority, has been from the first, and still is, low. "Editions, 1656, 1669." Wallace Reporters, 3d ed. 108–110.

[4] See ante, § 562, *Benloe*, note.

[5] See ante, § 564, *Chipman*, note.

[6] See ante, § 582, *Lutwyche*, note.

[7] We find *La.* N.S. cited, in the Louisiana Reports, as "N.S." simply. In a law book published for use out of the State, this abbreviation would not be understood.

§ 588. O. — Principal Collection.

* Officer's Reports. Same as 1–9 *Minnesota.*
* Ogden's Reports. Same as 12–15 *Louisiana Annual.*
Ohio Reports; *Ohio;* Ohio; 20 vols.; 1821–1851.[1]
Ohio State Reports; *Ohio State;* Ohio; 1852 to the present time.[2]
Olcott's Reports; *Olcott;* U.S. D. C. So. Dist. of N.Y.; 1 vol.; 1843–1847.
* Oliver, Beavan, & Lefroy's Reports. Same as 5–7 *Railway & Canal Cases.*
Opinions (Official) of the Attorneys-General of the United States; *Opin. Att. Gen.*
* Ormond's Reports. Same as 12–15 *Alabama.*
Oughton's Ordo Judiciorum; *Ough. Ordo;* Eng.; 1738.[3]
* Overton's Reports. Same as *Tennessee.*[4]
Owen's Reports; *Owen;* Eng. K.B. and C.P.; 1 vol.; 1556–1615.[5]

§ 589. O. — Further Abbreviations.

* *O. Benl.* Old Benloe.[6]
O. Bridg. Orlando Bridgman's Reports.[7]

§ 590. P. — Principal Collection.

Page on Divorce; *Page Div.;* Am., 1850.

[1] Vols. 1–9, by Charles Hammond; 10, by P. B. Wilcox; 11–13, by Edwin M. Stanton; 14–19, by Hiram Griswold; 20, by William Lawrence.

[2] Vol. 1, by George W. McCook; 2, by Robert B. Warden; 3, by R. B. Warden and J. H. Smith; 4, by Robert B. Warden; 5–16, by Leander J. Critchfield.

[3] See ante, § 582, *Law,* note. This old work is quite celebrated.

[4] I have marked these reports with the star, because it appears to me to be quite certain that they ought never to be cited by the name of the reporter. Still, in matter of fact, we do sometimes see them so cited.

[5] These reports "were printed in folio anno 1656; and, though there is a vacancy in the pages of this volume from 77 to 80 inclusive, yet the book is perfect." Bridgman Leg. Bib. 284. There has never been any other edition. "The book is occasionally cited; but, I believe, enjoys no particular reputation, one way or the other. No satisfactory account is given of the manuscript from which it is taken, and it is but a translation from an unpublished original in French." Wallace Reporters, 3d ed. 107.

[6] See ante, § 562, *Benloe,* note.

[7] See ante, § 562, *Bridgman.*

Paige's Chancery Reports; *Paige;* N.Y.; 11 vols.; 1828–1845.
Paine's Reports; *Paine;* U.S. 2d Circuit; 1 vol.; 1810–1826.
Paley on Agency; *Paley Ag.* (or *Pal. Ag.*); Eng. & Am. notes. Con.
Palmer's Reports; *Palmer* (or *Pal.*); Eng.; 1 vol.; 1619–1629.[1]
* Papy's Reports. Same as 5–8 *Florida.*
Parker's Criminal Reports; *Parker C. C.* (or *Park. Cr.*); N. Y.; 1845 to the present time.[2]
Parker's Reports; *Parker* (or *Park.*); Eng. Ex. revenue cases; 1 vol.; 1743–1767.[3]
Parsons's Select Cases; *Parsons* (or *Par.*); Pa.; 2 vols.; 1841–1851.
Parsons on Contracts; *Parsons Con.;* 3 vols.; Am. Con.[4]
† Paton's Reports. Same as *Craigie, Stewart, & Paton.*
Patton & Heath's Reports; *Pat. & H.;* Va.; 2 vols.; 1855–1857.
Peake on Evidence; *Peake Ev.;* 1 vol.; Eng. & Am. notes.[5]
Peake's Nisi Prius Cases; *Peake;* Eng.; 1 vol.; 1779–1794.[6]
Peake's Additional Cases; *Peake Ad. Cas.;* Eng. N.P.; 1 vol.; 1795–1812.[7]
* Pearce's Reports. Same as *Dearsly;* also, as 2 *Denison.*[8]
* Peck's Reports. Same as 11–38 *Illinois.*
Peck's Reports; *Peck;* Tenn.; 1 vol.; 1822–1824.

[1] These reports "were printed but once, though they bear the different dates of 1678, 1688, and 1721, folio." Bridgman Leg. Bib. 234. The book is probably as good as the average of the old reports of no particular note. And see Wallace Reporters, 3d ed. 185.

[2] There have been thus far five volumes of these reports published. The full title is: "Reports of Decisions in Criminal Cases made at Term, at Chambers, and in the Courts of Oyer and Terminer, of the State of New York." Leaving out of view any particular merit or demerit in the respective reporters, these reports are intrinsically entitled to stand about with Barbour's Supreme Court Reports, mentioned ante, § 562.

[3] "The book is one of very good authority. Editions, fol. 1776, 8vo, 1791." Wallace Reporters, 3d ed. 276.

[4] The fifth edition is in three volumes; the previous four editions having been in two volumes respectively. The paging of the first edition is preserved in the three editions which next followed; but, in the fifth edition, the work is repaged. References to this book, therefore, should mention the edition. Professor Parsons is the author also of several other legal works; as, on "Bills and Notes," on "Maritime Law," on "Mercantile Law," and on "Partnership."

[5] This book was formerly much used; but it is now seldom opened, being superseded by better books. The last English edition is the fifth, published in 1822. The American edition is by Norris, published at Philadelphia, 1824.

[6] The last edition is the third, "corrected, with some additional cases, and references to subsequent decisions."

[7] This collection is sometimes bound in a volume by itself, and sometimes it is bound up with the third edition of the book mentioned in the text next before this.

[8] See ante, § 566, *Dearsly*, note; *Denison*, note.

Peere Williams's Reports; *P. Wms.;* Eng. Ch.; 3 vols.; 1695–1735.
Pennington's Reports; *Penning.* (or * *Penn.*); N.J.; 1 vol.; 1806–1813.
Pennsylvania Reports; *Pa.* (or * *Penn.*); Pa.; 3 vols.; 1829–1832.[1]
† Pennsylvania State Reports; *Pa. State;* Pa.; 1845 to the present time.[2]
* Penrose & Watts's Reports. Same as 2, 3 *Pennsylvania.*
Perkins's Profitable Book; *Perk. Prof. Bk.* (or *Perk.* or *Perkins*); 3 parts bound in 1 vol.; Eng.[3]

[1] Vol. 1, by William Rawle, Jr., Charles B. Penrose, and Frederick Watts; vols. 2 and 3, by Penrose and Watts alone. The abbreviation *Penn.* is objectionable; because, among other reasons, it would be confounded with *Penn.* for Pennington. *Penn.*, therefore, should not be used as the abbreviation for either series of reports.

[2] Vols. 1–10, by Robert M. Barr; 11, 12, by J. Pringle Jones (12 being by Jones in conjunction with R. C. McMurtrie, but being known as 2 Jones's Reports); 13–24, by George W. Harris; 25–36, by Joseph Casey; 37–50, by Robert E. Wright; 51, 52, by E. Frazer Smith. These reports are all cited, in the reports themselves, by the names of their respective reporters. But elsewhere they are perhaps as often cited under the general title of "Pennsylvania State Reports." On the principle (see ante, § 500) that every child is entitled to be called, out of the family, by the name it bears in the family, I have always deemed it to be the true method to cite these reports by the names of their respective reporters. On the title-pages, and in the lettering on the backs, they bear both names, and a double numbering to correspond to this arrangement. I suppose it is the right of every author to adopt any sort of title-page he may choose, and it is the right of other people to do as they choose about buying and using his book. But a book of reports is of a sort which in a sense compels people to buy and use it, whether they will or not. All persons who have to do with this class of books, therefore, will join me in the wish, I think, that reporters could be persuaded to let their productions go out with but a single name. The confusion, even then, will be found to be bad enough, — so numerous are the reports becoming, and names being often so much alike, — but, as it is, it is in some instances very trying to the patience of all except the modern Jobs.

[3] This is one of the books of the ante-Coke period. Fulbeck says: "In Mr. Parkin's book be many commendable things, delivered by a ready conceit, and pleasant method; many excellent cases, which savor of great reading, and good experience. His treatise is to young students acceptable and precious, to whom his very faults and errors be delightful; but it might be wished that he had written with less sharpness of wit, so he had discoursed with more depth of judgment. For he breaketh the force of weighty points with the shivers of nice diversities. Yet many things are to be allowed in him, many to be praised, so that the reader be careful in his choice, wherein he was too careless." Fulbeck Study Law, Sterling ed. of 1808, p. 72. Coke often referred to this book. He names it among the rest which he deems "right profitable" (see ante, § 562, *Bracton*, note), and I think it has always ranked well among the very early law books. Chancellor Kent says: "Perkins's Treatise of the Laws of England, written in the reign of Henry VIII., has always been deemed a valuable book for the learning and ingenuity displayed in it relating to the title and conveyance of real property. Coke said it was wittily and learnedly composed; and Lord Mansfield held it to be a good authority in point of law. It treats of grants, deeds, feoffments, exchange, dower, curtesy, devises, surrenders, reservations, and conditions; and it abounds with citations, and supports the positions laid

Perry & Davison's Reports; *Per. & D.;* Eng. Q.B.; 4 vols.; 1838–1841.

Peters's Reports; *Pet.;* U.S. Sup. Court; 16 vols.; 1828–1842.

Peters's Admiralty Decisions; *Pet. Adm.;* U.S. Dist. of Pa.; 2 vols.; 1792–1807.

Peters's Circuit Court Reports; *Pet. C. C.;* U.S. 3d Circuit; 1 vol.; 1803–1818.

Philadelphia Reports; *Philad.;* Pa.; 2 vols; 1850–1858.[1]

Phillimore's Reports; *Phillim.;* Eng. Ec.; 3 vols.; 1809–1821.

* Phillimore's Reports. Same as *Lee.*[2]

Phillimore on International Law; *Phillim. Int. Law;* 4 vols.; Eng. & Am. reprint of the first three volumes.[3]

Phillipps on Evidence; *Phil. Ev.;* 2 vols.; Eng. & Am. notes.[4]

down by references to the Year Books, and Fitzherbert Abridgment." 1 Kent Com. 504.

[1] The full title is as follows: "Philadelphia Reports; or, Legal Intelligencer condensed; containing the Decisions published in the 'Legal Intelligencer,' from 1850 to 1858. By Henry E. Wallace." At the top of the pages is placed the volume and page of the "Legal Intelligencer" in which the matter originally appeared; at the bottom, the paging proper of these volumes.

[2] See ante, § 582, *Lee.*

[3] The author of this work is Robert Phillimore; the reporter is Joseph. Mr. Robert Phillimore is the author, likewise, of a small book on the Law of Domicil, which was reprinted in this country, and of various legal tracts. Another Phillimore, J. G., has produced also some legal works.

[4] This work has been published, in England, in nine editions; the last, or ninth, bearing date 1848. It will be seen, therefore, that it must have been a good deal used at one time. The eighth edition, published in London in 1838, was revised and prepared for the press by the joint labors of Mr. Phillipps and Mr. Amos; therefore it is sometimes cited as Phillipps and Amos on Evidence. I see no good reason why it should be so designated. Mr. Hoffman says: "Evidence must be a science of slow and progressive growth; and so it has presented itself in England and elsewhere. It has, indeed, been greatly improved in that country within the last half century [this was written in 1836]; but seems to have derived its modern expansion and philosophical development, in a good degree, from the reflected operation of the wonderful growth there of knowledge generally. How much greater, then, would have been the cultivation of this branch of our science, had English lawyers, statesmen, and scholars been less wedded to their peculiar jurisprudence, and more addicted to the study of that of other countries. Mr. Phillipps's work is somewhat in a better spirit than most of the English works which preceded it; but is still a purely common-law production, with (as we believe) not a single reference, in either volume, to any foreign source whatever; and, what is still more remarkable, with but few of those speculative and enlarged views of the theory and science of proof, to which Mr. Eden alludes, in his 'Principles of Penal Law,' and which he regards as an unexplored field in the English law of his day, and which we have ventured to say, with a few exceptions, still continues so. We take pleasure, however, in referring to a small essay appended to the first volume of Mr. Phillipps's treatise;

† Phillipps & Amos on Evidence. Same as *Phillipps Ev.* 8th Lond. Ed.[1]
Phillips's Reports; *Phillips* (or **Phil.* or **Ph.*); Eng. Ch.; 2 vols.; 1841–1849.[2]
Phillips on Patents; *Phillips Pat.;* 1 vol.; Am. 1837.
Phillips on Insurance; *Phillips Ins.;* 2 vols.; Am. Con.
Pickering's Reports; *Pick.;* Mass.; 24 vols.; 1822–1840.
Pierce's Railroad Law; *Pierce Rail.;* 1 vol.; Am. 1857.
Pike's Reports; *Pike;* Ark.; 5 vols.; 1837–1842.[3]
Plowden's Reports; *Plow.;* Eng.; 2 parts; 1550–1580.[4]
Pollexfen's Reports; *Pol.;* Eng. all the courts; 1 vol.; 1669–1685.[5]

also particularly to the Scotch work of Mr. Glassford, on the same subject; and to that of Mr. Matthews on the doctrine of presumption and presumptive evidence." 1 Hoffman Leg. Studies, 2d ed. 383. This work, by Mr. Phillipps, is now almost or entirely superseded, in England, by later works, and perhaps better ones. It has some merit; indeed, in its day, it was as good a book for practical consultation as could be expected to flow from the pen of an English lawyer possessing no special capacity or qualifications for legal authorship. In the main, it is merely a digest of decisions, yet displays here and there a glimmering of something higher and better. In the United States, this book has a sort of life, while it is dead at home. It has been several times republished here; and it has received great accessions of American notes, the most bulky and best of which are by the late Messrs. Cowen & Hill. These gentlemen were both able lawyers: one of them was a very learned judge, who presided on the bench of the Supreme Court of New York at a time when the bench was an ornament to the State. (See ante, § 562, *Barbour*, note; § 586, *New York*, note). Still the notes are a tumbling together of all sorts of things; and the book, as a whole, in its American dress, presents a chaotic heap, such as our earth is supposed to have been before the dry land appeared. I see there is a new American edition advertised, to be entitled the fifth American, and to be in three volumes. The fourth American edition, 1859, was in three volumes; that of 1849 was in five volumes; that of 1839 in four volumes.

[1] See the last note.

[2] The abbreviation *Phil.* or *Ph.* is objectionable as being liable to be mistaken for Phillimore.

[3] Sometimes cited as 1–5 *Ark.* See ante, § 560, *Arkansas*, note.

[4] See ante, § 412, 414. This book is called "Commentaries or Reports." It differs a good deal in its style from a book of modern reports. Plowden, says Lord Coke, was "one great, learned, and grave man." 1 Co. Pref. Thomas Ed. xxvi. Again: "The exquisite and elaborate Commentaries at large of Master Plowden, a great man, and singularly well learned." 3 Co. Pref. Thomas Ed. viii. It is perhaps sufficient to say, in a word, that, by universal consent, there is no higher authority in the law, of the date of these Commentaries, than Plowden. See, for a fuller statement, Wallace Reporters, 3d ed. 100. The book "was published originally in two parts. The first appeared in French, 1571, and both parts afterwards in 1578, 1584, 1588, 1599, 1613, 1684; English, 1761, 1779; Dublin, 2 vols. octavo, 1792, and London, 1816. The translation was enriched by a great number of additional notes and references, which, Mr. Hargrave remarks, are generally very pertinent, and indicative of great industry and judgment in the editor." Ib. 101.

[5] These are reports of cases in which the reporter was himself engaged as coun-

Popham's Reports; *Popham* (or *Poph.*); Eng.; 1 vol.; 1592–1627.[1]

* Porter's Reports. Same as 3–7 *Indiana.*

Porter's Reports; *Port.;* Ala.; 9 vols.; 1834–1839.[2] *

Poynter on Marriage and Divorce; *Poynter Mar. & Div.;* 1 vol.; Eng. (2d ed. 1824) and Am. reprint.

Practical Register; *Pract. Reg.* (or *Pract. Reg. C. P.* or *Rich. P. R. C. P.*); Eng. C.P.; 1 vol.; 1704–1724.[3]

Practical Register in Chancery; *Pract. Reg. Ch.;* Eng. Ch.; 1 vol.[4]

† Practice Cases. Same as *Cases of Practice.*

* Practice Cases. Same as *New Practice Cases.*

Precedents in Chancery [Reports]; *Preced. Ch.* (or *Pre. Ch.*); Eng. Ch.; 1 vol.; 1689–1722.[5]

sel. The book has not commanded very extensive professional attention, yet its standing seems to be tolerably fair. There has been but one edition. The impression I have seen of it is dated 1702. "The copies of Pollexfen's Reports are very incorrect; varying in the pages, and in the dates, sometimes being printed in numeral letters, thus MDCII. In the pages there is a chasm from 173 to 176, and from 181 to 184. Pages 649 and 652 are mistaken, and page 189 is repeated." Bridgman Leg. Bib. 257.

[1] "First printed, in 1656, from cases written with his own hand in French, and faithfully translated into English, and secondly in 1682, with some remarkable cases reported by others since his death." Bridgman Leg. Bib. 257. These added cases have been sometimes cited as 2 Popham. The book is not one of much authority; indeed it is sometimes rated very low. "Popham's Reports, properly so called, occupy only the first 123 pages of the volume, and the cases in that part are more respected than those which follow." Wallace Reporters, 3d ed. 150.

[2] And see ante, § 560, *Alabama*, note.

[3] This book was published in 1743. Its title is: "Practical Register of the Common Pleas, containing Select Cases or Determinations in Points of Practice of that Court, in the reigns of Queen Anne, George I., and George II." It must be distinguished from the "Practical Register in Chancery," by Wyatt, to be mentioned next in the text, and from Lilly's Practical Register. It is cited in "Tomlins's Repertorium" as "*Pract. Reg.*," without any thing more, and I believe this to be the true method. Wallace says, "it is usually cited as Richardson's P. R. C. P." Wallace Reporters, 3d ed. 254. In Chitty's Equity Digest, Wyatt's "Practical Register in Chancery," to be next mentioned in the text, is cited simply as "*Pr. Reg.;*" but there are various objections to this. I am not aware that the *Pract. Reg.* we are now considering has any particular reputation any way. It is not often consulted now.

[4] See the last note. The reputation of this book is good. And see Bridgman Leg. Bib. 263; Wallace Reporters, 3d ed. 306. It was first published in 1714; then, in a new edition, with added cases, &c., by Wyatt, in 1800.

[5] "It is not generally known to whose hand the public are indebted for this valuable collection. Lord Hardwicke, however, said, that as far as the year 1708 it was made by Mr. Pooley, and the remainder by Mr. Robins. . . . Several of the cases in this book are in the same words as Gilbert's Reports in Chancery. . . . The impressions of this work are dated in 1733, 1747, and 1750, and are printed in folio; but in 1786 they were reprinted in royal octavo, with the advantages of

Price's Reports; *Price;* Eng. Ex.; 13 vols.; 1814–1824.
* Prideaux & Cole's Reports. Same as 4 *New Sessions Cases.*
Pulton de Pace Regis et Regni; *Pulton de Pace;* Eng.[1]
Pyke's Reports; *Pyke;* L. C. K. B.; 1 vol.; 1810.[2]

§ 591. P. — Further Abbreviations.

P. C. Pleas of the Crown.
Phil. & M. (or † *P. & M*). The reign of Philip and Mary.

§ 592. Q. — Principal Collection.

Queen's Bench Reports; *Q. B.;* Eng. Q. B.; 18 vols.; 1841–1852.[3]
* Queen's Bench Reports. Same as *Upper Canada Queen's Bench.*

§ 593. Q. — Further Abbreviations.

Q.C. Queen's Counsel.
* *Q. t.* Qui tam.
* *Q. War.* Quo Warranto.

marginal notes and references to the more modern authorities . . . by Thomas Finch, Esq. It is, however, to be lamented [see ante, § 442] that Mr. Finch did not name the cases referred to, rather than adopt the too common and tedious mode of reference by figures only." Bridgman Leg. Bib. 264, 265. See, also, Wallace Reporters, 3d ed. 310.

[1] The full title of this work is: "De Pace Regis et Regni; viz., a Treatise declaring which be the great and generall Offences of the Realme, and chiefe impediments of the Peace of the King and the Kingdome," &c. It was published in folio; the several editions being as follows: 1609, 1610, 1615, 1623. "The contents of the two first-mentioned editions are the same, but the pages do not agree, both editions being very incorrectly paged throughout." Worrall Bib. Leg. 84. This is an old criminal-law book, which, though not exactly a legal authority in the full sense of the expression, is yet quite valuable. Pulton was also the editor of an excellent collection of the statutes in force in his day. I have found these statutes of his quite convenient as presenting at one view substantially the statute law of our mother country as it stood at about the time when our ancestors brought the English law to this country. His collection is in one huge folio volume. Pulton was also the author of one or two other law books.

[2] This volume was never completed.

[3] These reports are by Adolphus & Ellis, and are sometimes, but less correctly cited as Adolphus & Ellis, New Series.

§ 594. R. — Principal Collection.

Railway & Canal Cases; *Railw. Cas.;* Eng.; 7 vols.; 1835–1854.[1]

Raithby's Statutes. See *Statutes at Large.*

Ram on Legal Judgments; *Ram Leg. Judgm.;* 1 vol.; Eng. 1822, & Am. reprint.[2]

Randolph's Reports; *Rand.;* 6 vols.; 1821–1828.[3]

* Randolph's Reports. Same as 7–11 *Louisiana Annual.*

Rawle's Reports; *Rawle;* Pa.; 5 vols.; 1828–1835.

Rawle on Covenants for Title; *Rawle Cov. Title;* 1 vol.; Am. Con.

* Rawle, Penrose, & Watt's Reports. Same as 1 *Pennsylvania.*

Ray's Medical Jurisprudence of Insanity; *Ray Med. Jurisp. Insan.;* 1 vol.; Am. Con.[4]

Raymond's Reports [Robert, Lord]; *Ld. Raym.;* Eng. K.B. & C.P.; 3 vols.; 1694–1734.[5]

Raymond's Reports [Sir Thomas]; *T. Raym.;* Eng. the three Com. Law Cts.; 1 vol.; 1660–1684.[6]

[1] Vols. 1 and 2, by Henry Iltid Nicholl, Thomas Hare, and John Manson Carrow; vol. 3, by Carrow and Lionel Oliver; 4, by Carrow, Oliver, Edward Beavan, and Thomas E. P. Lefroy; and the rest by Oliver, Beavan, and Lefroy.

[2] There are also several other law books by Ram, — none of them of special legal merit.

[3] As to the form of the abbreviation, see ante, § 507.

[4] The numbering of the sections in the different editions differs; consequently all references to this book should mention the edition.

[5] "First printed in 1743; secondly, in 1765, two volumes folio; thirdly, with the entries of pleadings, translated and published by George Wilson, Esq., and with many corrections and additional references to former and later reports, anno 1775, three volumes folio; and, fourthly, corrected, with marginal notes and additional references, by John Bayley, Esq., Sergeant-at-law, anno 1790, three volumes octavo." Bridgman Leg. Bib. 281. There is a Dublin reprint of this edition by Bayley, and I think some of the impressions of the London edition bear on their title-page a date later than 1790. At least, according to the catalogues they do. Wallace says, this book "has also been more recently edited by Gale." Wallace Reporters, 3d ed. 251. I suppose, of course, this statement is correct, but none of the catalogues which happen to be by me now mention Gale's edition; and the catalogues before me of the London publishers set down Bayley's edition as the last. The standing of these reports in professional estimation is on the whole good. The later editions are quite an improvement on the earlier ones. The reports, properly so called, are still in two volumes; the added third volume consisting of Entries; and it has been published by itself as a book of entries.

[6] "First printed in 1696; secondly, in 1743, folio; and thirdly, in 1803, octavo." Bridgman Leg. Bib. 281. These reports are well esteemed. "This reporter was the father of Lord Raymond, eminent likewise as a reporter." Wallace Reporters, 3d ed. 205.

Redfield's Surrogate Reports; *Redf.;* N.Y.; 1 vol.; 1857–1863.
Redfield on Railways; *Redf. Railw.;* 2 vols.; Am. Con.[1]
* Redington's Reports. Same as 31–35 *Maine.*
Reeve on the Domestic Relations; *Reeve Dom. Rel.;* 1 vol.; Am. Con.
Reeves's History of the English Law; *Reeves Hist. Eng. Law;* 3d ed. 5 vols.; Eng.[2]
Reports in Chancery; *Rep. Ch.;* Eng. Ch.; 3 parts; 1615–1712.[3]

[1] The first two editions were severally in one volume; the third edition is in two volumes. Judge Redfield is likewise the author of a work on the Law of Wills in two parts, bound in two distinct volumes.

[2] The full title is: "History of the English Law, from the time of the Saxons to the end of the reign of Elizabeth." Bridgman says: "The History of the English Law, from the time of the Saxons to the reign of Henry VII., was first published by John Reeves, Esq., in two volumes quarto, anno 1783, 1784; and afterwards a second edition was brought down to the end of Philip and Mary, and published in 1787, four volumes octavo." Bridgman Leg. Bib. 282. The reader therefore perceives that the fifth volume, appended to the third edition, brings the work down to the end of the reign of Elizabeth. This work is well written, and is in all respects a work of great legal interest. The same field has not been covered by any other author so well. Warren urgently recommends its study by students. Warren Law Stud. 2d ed. 266. Hoffman says: "The style of this production is easy, and the manner of treating the subject as interesting as the topics would admit; but, notwithstanding their interest and importance, it must be admitted to be a work which should be rather frequently than continuedly in the hands of the student. Like some other works of great value, it fatigues more from the multiplicity of its topics than from the dulness either of its matter or manner. The most judicious method, therefore, of reading this work is to take it up at intervals, and to impress faithfully on the mind the law as it existed at a particular period, before proceeding with it in all its variety of changes." 1 Hoffman Leg. Stud. 2d ed. 163. My own opinion, if it is of any consequence, is as follows. The method of the author being to present a sort of dissertation, stating what the law was at a given period, — going over the whole field of the law in this way, — then to take another period further down in the line of time, and state what changes had been wrought and what the law then was, and so continue step by step with this sort of unfolding, the reader wearies of necessity with following him. Perusing such a work, and getting interested with the doctrine the author is developing, we long to see the theme drawn down the stream of time, to our own day, and become dissatisfied at not finding it so. We are learning to-day, unlearning next week, and never arriving at any practical truth. Reeves executed his plan well; but there is a vice in the plan, and the reading of his book never satisfies. A book written as well on the other plan — satisfying the longings which it creates in the minds of the readers — would be immensely popular, and in a very considerable degree useful. As it is, we must be content to read Reeves somewhat according to Hoffman's suggestion; but, on the whole, we shall find it better to refer to than to read in any way continuously.

[3] The fuller title of this book is: "Reports of Cases taken and adjudged in the Court of Chancery, in the reign of King Charles I., Charles II., James II., William III., and Queen Anne." "The different parts of this book possess unequal merit." Wallace Reporters, 3d ed. 295. And see this author for a full view of the origin and

* Reports tempore Queen Anne. Same as 11 *Modern.*

Reports tempore Finch; *Rep. temp. Finch;* Eng. Ch.; 1 vol.; 1673–1681.[1]

† Reports tempore Holt. Same as *Holt.*

Rhode Island Reports; *R.I.;* R.I.; 1828 to the present time.[2]

Rice's Law Reports; *Rice;* S.C.; 1 vol.; 1838, 1839.

Rice's Chancery Reports; *Rice Ch.;* S.C.; 1 vol.; 1838, 1839.

Richardson's Law Reports; *Rich.;* S.C.; vols. 1–4, 1844–1847; vols. 5, et seq., 1850 to the present time.

Richardson's Equity Reports; *Rich. Eq.;* S.C.; vols. 1, 2, 1844–1846; vols. 3 et seq., 1850 to the present time.

* Richardson & Woodbury's Reports. Same as 2 *New Hampshire.*

Ridgeway's Reports; *Ridgw.* (or *Ridgw. Cas. temp. Hardw.*); Eng. Ch. & K.B.; 1 vol.; 1733–1737 and 1744–1746.[3]

Ridgeway's Parliamentary Cases; *Ridgw. P.C.;* Irish; 3 vols.; 1784–1798.[4]

Ridgeway, Lapp, & Schoales's Reports; *Ridgw. L. & S.;* Irish, K.B.; 1 vol.; 1793–1795.

Riley's Law Reports; *Riley;* S.C.; 1 vol.; 1836, 1837.

Riley's Chancery Cases; *Riley Ch.;* S.C.; 1 vol.; 1836, 1837.

* Robard's Reports. Same as 12, 13 *Missouri.*

Robb's Patent Cases; *Robb Pat. Cas.;* U.S. Sup. & Cir. Cts.; 2 vols.; to 1850.

Roberts's Digest of Select British Statutes; *Roberts Stats.;* 1 vol.; Am.[5]

merits of these reports. My own edition is the second, published in 1715. It has the autograph of the late Mr. Justice Story, to whom it once belonged; also a separate note, in his handwriting, as follows: "*Memo.* The third edition of this work was published in 1736; but it contains no additional cases, and only a few verbal corrections. J. Story."

[1] See ante, § 570, *Finch* and note; also § 586, *Nelson*, note. These are regarded by all as very poor reports. And see Wallace Reporters, 3d ed. 303.

[2] Vol. 1, by J. K. Angell; 2, by Thomas Durfee; 3, by John P. Knowles; vols. 4–6, by Samuel Ames.

[3] This book was published in 1794 from a manuscript the author of which is unknown. Its reputation is, I believe, fair. "Ridgeway's Hardwicke was printed at Dublin. Some copies of it bear the London imprint, but the title-page alone, I believe, was changed." Wallace Reporters, 3d ed. 271. As might be supposed, many or most of the cases are to be found in other reports previously published. The abbreviation, it is perceived, omits the *e*, following the *g*. Such is the custom, it looks better, and the full name is often so spelled.

[4] "We are credibly informed," says Bridgman, "that the learned author proposes shortly to publish a fourth volume, and thereby to continue this valuable collection of cases to the time of the Union." Bridgman Leg. Bib. 287. The proposed fourth volume, however, was never published.

[5] The full title of the second edition of this book, published at Philadelphia in 1847, is as follows: "Digest of Select British Statutes; comprising those which,

Robertson's Ecclesiastical Reports; *Rob. Ec.;* Eng.; 2 vols.; 1844–1855.[1]

Robertson's Reports; *Rob. N.Y.;* N.Y. City Superior Ct.; 1863 to the present time.

Robertson's Scotch Appeal Reports; *Robertson Ap.;* H. of L.; 1 vol.; 1707–1727.[2]

Robinson's Admiralty Reports [Chr.]; *C. Rob. Adm.;* Eng.; 6 vols.; 1798–1808.[3]

Robinson's Admiralty Reports [William]; *W. Rob. Adm.;* Eng.; 3 vols.; 1838–1852.[4]

Robinson's Reports; *Rob. La.;* La.; 12 vols.; 1841–1846.

Robinson's Reports; *Rob. Va.;* Va.; 2 vols.; 1842–1844.

Robinson's Scotch Appeal Reports; *Robinson Ap.;* H. of L.; 1840, 1841.[5]

* Robinson's Reports. Same as *Upper Canada Chamber;* or as *Upper Canada Practice;* or as 14 et seq. *Upper Canada Queen's Bench;* or as *Old Series, U. C.;* or as 1–4 *Louisiana Annual.*

* Rogers's Reports. Same as *City Hall Recorder.*

Rolle's Abridgment; *Rol. Abr.* (or *Ro. Abr.*); 2 vols.; Eng.; pub. 1668.[6]

Rolle's Reports; *Rol.;* Eng. K.B.; 2 parts; 1614–1625.[7]

Root's Reports; *Root;* Conn.; 2 vols.; 1789–1798.

Roper on Husband and Wife; *Roper Hus. & Wife;* 2 vols.; Eng. & Am. reprint.[8]

Roper on Legacies; *Roper Leg.;* 2 vols.; Eng. & Am. notes. Con.

according to the Report of the Judges of the Supreme Court made to the Legislature, appear to be in force in Pennsylvania; with some others. With Notes and Illustrations. 2d ed., with additional notes," &c. Though this is a Pennsylvania book, it is more or less useful in the other States, especially to practitioners who have not at hand any other collection of the early English statutes.

[1] The second volume was never completed; three parts only having been published.

[2] I do not see any way of distinguishing these reports from *Robinson's* Scotch Appeal Reports, but to write the name *Robertson* in full.

[3] The shorter abbreviation *Rob. Adm.* signifies also this series of reports; but, within a principle stated ante, § 509, it is perhaps better to prefix the *C.*, as more clearly distinguishing these reports from William Robinson's Admiralty Reports. If we say *C. Rob.* simply, it will not be so well understood; besides, this might be understood to mean Conway Robinson, a Virginia reporter.

[4] Vol. 3 was never finished; two parts only having been published.

[5] See ante, *Robertson* and note.

[6] Ante, § 219, 220; 1 Kent Com. 509.

[7] These reports were published, in French, in 1675, 1676, and have never been translated or even reprinted in the original. Yet they are excellently well esteemed.

[8] See ante, § 562, *Bright*, note.

Roscoe on Criminal Evidence; *Roscoe Crim. Ev.;* 1 vol.; Eng. & Am. notes.[1]

Rose's Bankruptcy Cases; *Rose;* Eng. Ch.; 2 vols.; 1810–1816.

Ruffhead's Statutes. See *Statutes at Large.*

Russell's Reports; *Russ.;* Eng. Ch.; 5 vols.; 1826–1829.

Russell on Crimes; *Russ. Crimes;* 3 vols.; Eng. & Am. notes. Con.[2]

Russell & Mylne's Reports; *Russ. & M.;* Eng. Ch.; 2 vols.; 1829–1831.

Russell & Ryan's Crown Cases Reserved; *Russ. & Ry.;* Eng.; 1799–1824.

Rutherforth's Institutes; *Ruth. Inst.;* 2 vols. [sometimes bound in one]; Eng. & Am. reprint.[3]

* Ryan & Moody's Reports. Same as *Moody.*

Ryan & Moody's Nisi Prius Cases; *Ryan & Moody N.P.;* Eng.; 1 vol.; 1823–1826.

§ 595. R. — Further Abbreviations.

R. M. Charl. R. M. Charlton's Reports. See *Charlton.*

R. S. Revised Statutes.

Rep. Same as Coke. See *Coke.*

* *Rep. Con. Ct.* Same as *Mill.*[4]

Rich. (or *R.*). The reign of King Richard.

§ 596. S. — Principal Collection.

Salkeld's Reports; *Salk.;* Eng.; 3 vols.; 1689–1712.[5]

[1] The paging of the different editions differs. There are other law books also by Roscoe.

[2] See Bishop Crim. Proced. I. § 1089. The paging in the different editions differs; therefore every reference to this work should specify the edition. This is readily done for English readers, by adding to the abbreviation the number of the edition; thus, *Russ. Crimes, 4th ed.* There have been several American editions, therefore such a reference is a little liable to create confusion with American readers. To obviate this difficulty, as it appeared to me, I used to cite *Russ. Crimes, Grea. Ed.* There was then but one edition edited by Greaves, being the third English. Since then a fourth English has appeared edited also by Greaves, therefore this form of the citation remains no longer distinct. I have noted this book as in three volumes. In all the editions, however, previous to the fourth English, it was in two volumes.

[3] This is an excellent work. The following is the full title: "Institutes of Natural Law; being the substance of a Course of Lectures on Grotius de Jure Belli et Pacis, read in St. John's College, Cambridge."

[4] See ante, § 500, 564, *Constitutional Reports, New Series,* note.

[5] "This collection embraces the period when, under the presidency of Lord

Sandford's Superior Court Reports; *Sandf.;* N.Y.; 5 vols.; 1847–1852.
Sandford's Chancery Reports; *Sandf. Ch.;* N.Y.; 4 vols.; 1843–1847.
Saunders's Reports; *Saund.;* Eng. K.B.; 2 vols.; 1666–1673.[1]
Sausse & Scully's Reports; *Sau. & S.;* Irish, Ch.; 1 vol.; 1837–1840.
Savile's Reports; *Savile* (or *Sav.*); Eng. K.B. and Ex.; 1 vol.; 1580–1594.[2]
Saxton's Chancery Reports; *Saxton;* N. J.; 1 vol.; 1830–1832.
Sayer's Reports; *Say.;* Eng. K.B.; 1 vol.; 1751–1756.[3]
Scammon's Reports; *Scam.;* Ill.; 4 vols.; 1832–1843.

C. J. Holt, the authority of the courts was restored, and established upon the firm principles of integrity and constitutional knowledge. The learned serjeant is reputed to have taken his cases very ably." Bridgman Leg. Bib. 295. The third volume, however, was a posthumous publication of detached notes never, it is supposed, designed for publication, and no part of the praise bestowed on the first two volumes belongs to this. The cases in the first two volumes are reported too briefly; still they are well done, and, on the whole, quite reliable. "Salkeld has passed through six editions. The first three were printed in 1717, 1721, 1731, in two parts folio; the fourth, in 1742, 1743; the fifth, by Serjeant Wilson, in 1773 in three parts folio; and the sixth, in 1795, by Mr. Evans, the translator of Pothier, in three volumes octavo, which was republished in Philadelphia in 1822." Wallace Reporters, 3d ed. 248. The first two parts, or volumes, are paged continuously as one. These, it is perceived, are all there was of Salkeld at first; therefore the references to these reports, made in the books in the earlier times, frequently omitted to mention the part, but stated simply the page. Consequently such a reference must be understood to be either to the first or the second volume.

[1] These are old reports of sterling value. They were "first published in French, folio, two volumes, anno 1686; a second edition, translated, with the addition of several thousand references, was published in 1722; and a third in 1799, with notes and references by John Williams, Serjeant-at-Law, two volumes royal octavo, usually bound in three." Bridgman Leg. Bib. 296. There have been editions issued since Bridgman wrote; the last, being the sixth, published at London in 1845. The reports relate more particularly to the pleadings; and the notes are, as they should be, upon the like topics with the text. These notes by John Williams have always been greatly admired for their learning, for their accuracy, and for their aptness of illustration; and in subsequent editions they have been added to, in the like spirit, and with admirable learning, by John Patterson and Edward Vaughan Williams. The book, therefore, as it now appears, is less a book of reports than an admirable treatise, of the cursory sort, upon the common law of pleading. It is bound in three volumes. References to Saunders are generally made to the annotated book; thus, *Saund. Wms. Ed.* See, also, 1 Kent Com. 485.

[2] "Published in French, first in 1675; and, secondly, in 1688." Bridgman Leg. Bib. 297. "It bears the name of a reputable editor, but I have not found a word upon it, either of censure or praise." Wallace Reporters, 3d ed. 142. It is but seldom we see these reports referred to. The volume itself is only a thin one, of 136 pages besides the Index.

[3] Published in folio, London, 1775, followed by a Dublin reprint in octavo, 1790. Not a book of much repute.

Schoales & Lefroy's Reports; *Sch. & L.* (or *Sch. & Lef.*); Irish, Ch.; 2 vols.; 1802–1806.

Scotch Court of Session Cases, first series; *Scotch Sess. Cas. 1st ser.*; Scotch; 16 vols.; 1821–1838.[1]

Scotch Court of Session Cases, second series; *Scotch Sess. Cas. 2d ser.*; Scotch; 24 vols.; 1838–1862.[1]

Scotch Court of Session Cases, third Series; *Scotch Sess. Cas. 3d ser.*; Scotch; 1862 to the present time.[1]

* Scott's Reports. Same as 10–18 *Common Bench*; also, *Common Bench, New Series.*

Scott's Reports; *Scott*; Eng.; 8 vols.; 1834–1840.

Scott's New Reports; *Scott N. R.*; Eng.; 8 vols.; 1840–1845.

Scribner on Dower; *Scrib. Dower*; 2 vols.; Am.; 1864, 1867.

Sedgwick on the Measure of Damages; *Sedgw. Dam.*; 1 vol.; Am. Con.

Sedgwick on Statutory and Constitutional Law; *Sedgw. Stat. Law*; 1 vol.; Am.; 1857.

Selden's Reports; *Seld.*; N.Y.; 6 vols.; 1851–1853.[2]

Selden's Notes of Cases; *Seld. Notes.*[2]

[1] These are reports of decisions by the highest and principal Scotch court of civil jurisdiction, — from which, of course, appeals may be taken to the House of Lords. The method of citation is not, in Scotland, the same which I have given in the text. There the forms seem to be quite diverse; but, for instance, the first series is quite often cited under the name of Shaw, one of its early reporters, or by the simple abbreviation *S.* Sometimes it is by the joint names of Shaw & Dunlop, two of its early reporters, abbreviated *S. & D.* or *S. D.* The second series is, in like manner, often cited, among other ways, as Dunlop's Reports, Dunlop being one of its early reporters, abbreviated *D.*; or as Dunlop, Bell, & Murray's Reports, abbreviated *D. B. M.* It is evident that such a mode of reference is not suited to the wants of American readers, who could not be relied upon to understand what was meant. Scotch writers quite frequently give the date of any decision to which they refer, and this enables the Scotch reader to find it, however inadequate may be the reference to the book in which it is contained. I will add the names of the reporters of these series as far as I happen to have them at hand; *First series*, vol. 1, by Patrick Shaw and James Ballantine; vols. 2–7, by Patrick Shaw and Alex. Dunlop; 8, by the same and J. M. Bell; 9, by Shaw, Dunlop, Mark Napier, and Bell; 10–12, by Shaw, Dunlop, and Bell; 13, by the same and John Murray; 14–16, by Dunlop, Bell, and Murray. *Second Series*, vols. 1, 2, by Alexander Dunlop, J. M. Bell, and John Murray; vol. 3, by the same and James Donaldson; 4, by Bell, Murray, and Donaldson; 5, by the same and George Young; 6–8, by Bell, Murray, Young, and H. L. Tennent; 9, 10, by Murray, Young, Tennent, and Patrick Fraser; 11, by Young, Tennent, and Fraser; 12, by the same and W. H. Murray; 13, by Tennent, Fraser, and Murray; 14 and 15, by the same and J. F. Montgomery.

[2] These reports are sometimes cited as 5–10 *New York*. See ante, § 586, *New York*, note.

[3] "While Mr. Selden was State reporter, he published, in advance of his regular

* Select Cases. Same as *Yates's Cases.*

Select Cases from the Records of the Supreme Court; *Sel. Cas. N.F.;* N.F.; 1 vol.; 1817–1828.[1]

Select Cases in Chancery; *Sel. Cas. Ch.* (or *Sel. Ch. Cas.*); Eng.; 1 vol.; 1724–1733.[2]

* Select Cases in Chancery. Same as 3 *Cases in Chancery.*[3]

Select Cases in Evidence.[4]

* Selwyn & Barnewall's Reports. Same as 1 *Barnewall & Alderson.*[5]

Sergeant & Rawle's Reports; *S. & R.;* Pa.; 17 vols.; 1814–1828.

Session Cases. Same as *Scotch Session Cases*, which see.

Sessions Cases; *Sess. Cas.;* Eng. K.B. [chiefly settlement]; 2 vols.; 1710–1748. And see *New Sessions Cases.*

Settlement Cases. See *Cases of Settlement.*

* Shaw's Reports. Same as 10, 11, and 30–35 *Vermont.*

† Shaw's Reports. Same as *Scotch Sess. Cas.* 1*st ser.*

Shaw's Appeal Cases; *Shaw Ap. Cas.;* H. of L. on Ap. from Scotland; 2 vols.; 1821–1824.

Shaw's Justiciary Cases; *Shaw Crim. Cas.;* Scotch; 1 vol.; 1848–1852.

† Shaw & Dunlop's Reports. Same as *Scotch Sess. Cas.* 1*st ser.*

Shaw & Maclean's Reports; *Shaw & M.;* H. of L. on Ap. from Scotland; 3 vols.; 1835–1838.[6]

* Shepherd's Reports. Same as 19–21, 24–38 *Alabama.*

* Shepley's Reports. Same as 13–18, 21–30 *Maine.*

volumes, brief notes of cases decided from term to term. A number of the cases mentioned in these notes have never been otherwise reported." 1 Abbott N.Y. Dig. Pref. xix.

[1] This compilation is by R. A. Tucker, Chief Justice.

[2] See ante, § 581, *K. C. R.*, note. See, also, ante, § 564, *Cases in Chancery*, note. "The present book is said by Lord Redesdale, in a passing remark, to be a book of no great authority, — an opinion which he had previously intimated at the bar while Attorney General. He called it 'an anonymous book, and therefore perhaps not to be considered of so much authority.' A second edition of this work, 'with explanatory notes, and references to former and subsequent determinations, by Stuart Macnaghten, of the Middle Temple,' was printed in London, octavo, in 1850." Wallace Reporters, 3d ed. 314. This edition was in 1851 reprinted at Philadelphia, in the serial known as the "Law Library."

[3] See ante, § 564, *Cases in Chancery*, note.

[4] This is a book I never saw. Bridgman says: "Sir John Strange is the reputed author of 'Select Cases relating to Evidence, by a late Barrister at Law,' and many of the cases in that book are in Strange's Reports. There was, however, a stop put to the sale of the book on its publication." Bridgman Leg. Bib. 302.

[5] See ante, § 562, *Barnewall & Alderson*, note.

[6] We sometimes meet with *S. & M.* as the form of the abbreviation; but this is objectionable, as being liable to be mistaken for a reference to Smedes & Marshall.

Sheppard's Touchstone; *Shep. Touch.;* 2 vols. [some of the editions in 3 vols.]; Eng. and Am. reprint.[1]

Shower's Reports; *Show.;* Eng. K.B.; 2 vols.; 1678–1695.[2]

Shower's Parliamentary Cases; *Show. P.C.;* Eng.; 1 vol.; 1694–1699.[3]

Siderfin's Reports; *Sid.;* Eng.; 2 parts, sometimes bound in one vol. and sometimes in two; 1657–1670.[4]

Simons's Reports; *Sim.;* Eng. Ch.; 17 vols.; 1826–1852.

Simons's Reports, New Series; *Sim.* N.S.; Eng. Ch.; 2 vols.; 1850–1852.

Simons & Stuart's Reports; *Sim. & S.;* Eng. Ch.; 2 vols.; 1822–1826.

Skinner's Reports; *Skin.;* Eng. K.B.; 1681–1698.[5]

* Slade's Reports. Same as 15 *Vermont.*

Smale & Giffard's Reports; *Smale & G.;* Eng. Ch.; 3 vols.; 1852–1857.

Smedes & Marshall's Reports; *Sm. & M.;* Missis.; 14 vols.; 1843–1850.[6]

Smedes & Marshall's Chancery Reports; *Sm. & M. Ch.;* Missis.; 1 vol.; 1840–1843.

* Smith's Reports. Same as 31–40 *English Law & Equity.*

* Smith's Reports. Same as 1–11 *Wisconsin.*

* Smith's Reports. Same as 15–27 *New York.*

Smith's Reports; *Smith;* Eng. K.B.; 3 vols.; 1803–1806.[7]

Smith's Leading Cases; *Smith Lead. Cas.;* 2 vols.; Eng. & Am. notes. Con.[8]

[1] This is one of the very much esteemed old books. The best edition is Preston's. It relates principally to questions of real property law.

[2] Not a book of the highest authority; though the second edition, by Thomas Leach, published in octavo in 1794, is quite an improvement upon the original folio. And see Wallace Reporters, 3d ed. 243.

[3] "These cases are learnedly reported, and the arguments of the counsel, as well as of the judges, are recorded in a very able manner. This mode of reporting, however, though valuable in itself, and particularly desirable to the profession, was thought an infringement upon the privileges of the House of Lords; and the publisher was called to the bar, for the publication of it." Bridgman Leg. Bib. 303.

[4] "First published in two parts annis 1683, 1684, or 1689, in two volumes folio; and, secondly, corrected, with the addition of many references to the first part only, by Robert Dobins, Edward Chilton, and Robert Skinner, Esqrs., in two parts French; and in two volumes folio." Bridgman Leg. Bib. 304. The date of this second edition is 1714. The book has never been translated into English. Its standing, in professional estimation, is low. See Wallace Reporters, 3d ed. 202.

[5] Published in 1728, — a fairly respectable book. Many of the cases were previously published in other collections.

[6] We sometimes see *S. & M.* as the form of the abbreviation. But this is objectionable as meaning equally Shaw & Maclean.

[7] "These Reports of John Prince Smith, Esq., were introduced as a part of a monthly publication called 'The Law Journal;' and some copies of the cases, having been separated and bound distinctly, with a title-page, formed these volumes, having the aspect of ordinary reports. Besides cases in the K.B., the volumes contain a few cases in chancery. The book is somewhat difficult to find." Wallace Reporters, 3d ed. 329, note.

[8] See ante, § 225–229.

Smith's Reports [E. Delafield]; *E. D. Smith;* N.Y. City C.P.; 4 vols.; 1850–1858.

Smith's Reports [E. Frazer]; *Smith, Pa.;* Pa.; 1865 to the present time.[1]

Smith's Reports [Thomas L.]; *Smith, Ind.;* Ind.; 1 vol.; 1848, 1849.[2]

Smith & Bates's Railway Cases; *Smith & Bates Railw. Cas.;* 2 vols.; Am. selected from the regular reports, with notes.

Smith & Batty's Reports; *Smith & Batty;* Irish, K.B.; 1 vol.; 1824, 1825.

Smythe's Reports; *Smythe, Ir.;* Irish, C.P. & Ex.; 1 vol.; 1839, 1840.

Sneed's Reports; *Sneed;* Tenn.; 5 vols.; 1853–1858.

Southard's Reports; *Southard* (or *South.*); N.J.; 2 vols.; 1816–1820.

Speers's Law Reports; *Speers;* S.C.; 2 vols.; 1842–1844.[3]

Speers's Equity Cases; *Speers Eq.;* S.C.; 1 vol.; 1842–1844.

Spencer's Reports; *Spencer;* N.J.; 1 vol.; 1842–1846.

Spinks's Ecclesiastical and Admiralty Reports; *Spinks;* Eng.; 2 vols.; 1853–1855.[4]

Sprague's Admiralty Decisions; *Sprague;* U.S. Dist. of Mass.; 1 vol.; 1841–1861.

* Stanton's Reports. Same as 11–13 *Ohio.*

Star Chamber Cases.[5]

Starkie on Evidence; *Stark. Ev.;* 3 vols.; Eng. & Am. notes.[6]

[1] Sometimes cited as 51 et seq. *Pennsylvania State.* See ante, § 590, *Pennsylvania State*, note.

[2] The cases in this volume are reported likewise in 1 Indiana. The latter is of the regular series; taking the precedence, I presume, of Smith as an authority.

[3] The name of the reporter is spelled, upon the title-pages of the volumes and in the publishers' advertisements, both *Speers* and *Spears.* I have from something inferred that *Speers* is the correct way, but I do not know.

[4] I have stated the number of volumes, and the period covered, according to the London catalogues, and according to the real fact. But the first volume has no cases of 1855; and the second cannot, I believe, be purchased through any of the ordinary channels. At all events, I have ordered it, and have known others to order it in several instances, without success. I never saw it. I suppose, and I have been told, that for some reason unknown to me it was suppressed soon after its publication. This book is sometimes found cited, in England, *Eccl. & Adm.*, without the name of the reporter.

[5] The title of this book, which is a 12mo, is: "Star-Chamber Cases: showing what Causes properly belong to the Cognizance of that Court. Collected for the most part out of Mr. Crompton his Booke, entitled The Jurisdiction of Divers Courts. London, 1641." Mr. Wallace says: "This volume, which is a mere pamphlet of fifty-five pages, is a treatise upon the jurisdiction of the Court of Star-Chamber, rather than formal reports in court." Wallace Reporters, 3d ed. 198. Of course, though it is a rare little tract, it has no practical interest in this country.

[6] The last English edition contains only the first volume, edited and enlarged; and the last American reprint consists of this volume only. Starkie was the author, also, of a work on "Criminal Pleading," and another on the "Law of Slander and Libel," — both, as likewise the book on Evidence, highly esteemed.

Starkie's Nisi Prius Reports; *Stark.;* Eng.; 3 vols.; 1814–1823.
* State Trials. See *Howell.*[1]
Statutes at Large; *Stats. at Large.*[2]
Stephen on Pleading; *Steph. Pl.;* 1 vol.; Eng. & Am. notes. Con.[3]
Stewart's Admiralty Reports; *Stew. Adm.;* N.S.; 1 vol.; 1803–1813.
Stewart's Reports; *Stew.;* Ala.; 3 vols.; 1827–1831.
Stewart & Porter's Reports; *Stew. & P.;* Ala.; 5 vols.; 1831–1834.
† St. Germain. See *Doctor & Student.*
Stockton's Reports; *Stock.;* N.J. Ch.; 2 vols.; 1852–1856.
Story's Reports; *Story;* U.S. 1st Circuit; 3 vols.; 1839–1845.
Story on the Conflict of Laws; *Story Confl. Laws;* 1 vol.; Am. Con.[4]
Strange's Reports; *Stra.;* Eng. all the courts; 2 vols.; 1716–1749.[5]

[1] We sometimes see a reference to the "State Trials," simply, without any editor's name. Such a reference is inadequate because the pagings of the editions differ, and we wish to have the particular edition.

[2] In the United States, the edition of the national statutes published by Little, Brown, & Co., being the edition specially authorized by Congress, is commonly referred to as *Stats. at Large*, or *U.S. Stats. at Large.* In England, there are several editions known by the general name of "Statutes at Large," therefore a reference made in this way simply would not direct us to the particular edition, and it is not generally so made. If for any reason a writer wishes to direct his reader to a particular edition, he specifies it; but, subject to such an exception, all reference to the English statutes — or to those which govern Scotland or Ireland, enacted since the Union of those countries respectively — specify simply the reign, the year of the reign in which the session of parliament is held, and the chapter and section of the particular enactment. The editions differ only in their earlier volumes, or in being printed in quarto or in octavo. The best for American use is either Ruffhead or Pickering, — the former being in quarto size, the latter in octavo. The early volumes of Raithby present some special points of interest; but the objection to them is, that they do not give us all the statutes which we may have occasion to consult. I have found great convenience in having at hand an old edition of Pulton, to be used in connection with Ruffhead. Even alone it is one of the best old books which can be imported, if it can be obtained, as mine was, for a mere trifle. See ante, § 590, *Pulton*, note.

[3] This is a volume not large in size, but excellent in matter. It has always been admired for its succinct and accurate setting out, in an orderly form, of the doctrines of special pleading.

[4] See, as to the works of the late Mr. Justice Story, ante, § 307–309. He wrote, besides the work mentioned in the text, legal commentaries on the "Constitution of the United States," on "Equity Jurisprudence," on "Equity Pleading," on "Bailments," on "Agency," on "Partnership," on "Bills of Exchange," and on "Promissory Notes." His son, William W. Story, who was the editor of "Story's Reports," wrote on the "Law of Sales," and on the "Law of Contracts."

[5] "First published in two volumes folio, anno 1755; secondly, with additional references, in two volumes royal octavo, anno 1782; and, thirdly, with notes and additional references to contemporary reporters and later cases, by Michael Nolan, Esq., of Lincoln's Inn, two volumes royal octavo, anno 1795. There is a less correct edition of Strange's Reports, in two volumes octavo, dated 1782, but of an inferior size

* Stringfellow's Reports; Same as 9–11 *Missouri.*
Strobhart's Law Reports; *Strob.;* S.C.; 5 vols.; 1846–1850.
Strobhart's Equity Reports; *Strob. Eq.;* S.C.; 4 vols.; 1846–1850.
Stuart's Reports; *Stuart, L.C.;* L.C. K.B.; 1 vol.; 1810–1835.
Style's Reports; *Style* (or *Sty.*); Eng. Upper Bench; 1 vol.; 1645–1655.[1]
Sumner's Reports; *Sumner;* U.S. 1st Circuit; 3 vols.; 1830–1839.
Swabey's Reports; *Swab.;* Eng. Adm.; 1 vol.; 1855–1859.
* Swabey's Reports. Same as *Deane & Swabey.*
Swabey & Tristram's Reports; *Swab. & T.;* Eng. Prob. & Div. Courts; 4 vols.; 1858–1865.[2]
Swan's Reports; *Swan, Tenn.;* Tenn.; 2 vols.; 1851–1853.
Swanston's Reports; *Swanst.;* Eng. Ch.; 3 vols.; 1818, 1819.
Swinburne on Spousals; *Swinb. Spousals;* 1 vol.; Eng.[3]
Swinburne on Wills; *Swinb. Wills;* 1 vol.; Eng.[4]
Swinton's Justiciary Reports; *Swinton*; Scotch, Criminal; 2 vols.; 1835–1841.
Syme's Justiciary Reports; *Syme;* Scotch, Criminal; 1 vol.; 1826–1829.

§ 597. S. — Further Abbreviations.

† *S.* Same as *Scotch Sess. Cas.* 1*st Ser.*

and double paging." Bridgman Leg. Bib. 335. The style of reporting, in these volumes, is too brief; but, subject to this qualification, these reports are, on the whole, well done. The "Select Cases on Evidence," mentioned ante, are said to be sometimes cited as "8vo Strange." See Wallace Reporters, 3d ed. 258.

[1] "Published in folio, anno 1658. These reports are singularly valuable from the circumstance of being the only cases extant of the common-law courts for several years in the time of the Usurpation, during which Sir Henry Rolle, and afterwards John Glynn, sat as Chief Justices of the Upper Bench." Bridgman Leg. Bib. 336. These reports constitute but a thin volume, and, perhaps, partly because they are reports of what was done under Cromwell's government, they have not been very much referred to by English judges and law writers. Still it is believed, that, on the whole, they stand respectably well. And see Wallace Reporters, 3d ed. 200.

[2] One part only of vol. 4 has, *I think*, been published. This, at least, is as far as I have seen. I am not quite certain whether this is absolutely the last which is to be given us of this series or not.

[3] An old book of considerable interest, upon the matrimonial law.

[4] This work is by the same author as the last. It "has passed through seven editions, — first, in quarto, anno 1590; secondly, in 1611; thirdly, in 1635; fourthly, in 1677; fifthly, in folio, 1728; sixthly, corrected and much enlarged, 1743; and, seventhly, in 1803, with valuable annotations illustrative of the subject to the present time, by the late John Joseph Powell, Esq., and prepared for the press by James Wake, Esq., three volumes octavo." Bridgman Leg. Bib. 337, 338. There has been, I believe, no edition since this seventh.

† *S. B.* Upper Bench.
† *S. C. C.* Select Cases in Chancery.[1]
S. P. Same Point.
Sir F. Moore. Sir Francis Moore's Reports. See *Moore.*

§ 598. T. — Principal Collection.

Tait on Evidence; *Tait Ev.;* 1 vol.; Scotch.
* Talbot's Reports. Same as *Cases tempore Talbot.*
Tamlyn's Reports; *Taml.;* Eng. Ch.; 1 vol.; 1829, 1830.
* Tanner's Reports. Same as 8–14 *Indiana.*
Tappan's Reports; *Tappan;* Ohio, C.P.; 1 vol.; 1816–1819.
Taunton's Reports; *Taunt.;* Eng.; 8 vols.; 1807–1819.
Taylor's Medical Jurisprudence; *Taylor Med. Jurisp.* (or *Tayl. Med. Jurisp.*); Eng. & Am. notes.
Taylor's Reports; *Taylor* (or *Tayl.* or *Tay.*); N.C.; 1 vol.; 1798–1802.[2]
Taylor on Evidence; *Taylor Ev.;* 2 vols.; Eng. Con.[3]
Taylor on Landlord and Tenant; *Taylor L. & Ten.;* 1 vol.; Am. Con.
Temple & Mew's Reports; *Temp. & M.;* Eng. Crim. Ap.; 1 vol.; 1848–1851.
Tennessee Reports; *Tenn.;* Tenn.; 2 vols.; 1791–1815.[4]
Term Reports; *T. R.;* Eng. K.B.; 8 vols.; 1785–1800.[5]
Term Reports, North Carolina. See *North Carolina;* also, *Taylor* and note.
Texas Reports; *Texas;* 1846 to the present time.[6]
Thacher's Criminal Cases; *Thacher Crim. Cas.;* Mass.; 1 vol.; 1823–1843.[7]

[1] See ante, § 564, *Cases in Chancery*, note.

[2] There is another volume of North Carolina Reports by the same reporter, covering the period from 1816 to 1818, sometimes cited as 2 Taylor; but it is also known as the "North Carolina Term Reports" (abbreviated *N. C. Term R.*), by which name it is perhaps more correctly cited. And see ante, § 586, *North Carolina Term Reports* and note.

[3] This work consists of the first volume of Greenleaf on Evidence, enlarged and adapted to the English practice. It appears to be, at the present time, the leading English work on the subject. As to Greenleaf on Evidence, see ante, § 310, 311.

[4] These reports are by Overton; and they are sometimes, but not quite correctly, cited by his name.

[5] By Durnford & East, by whose names they are sometimes cited, but not correctly. See ante, § 496, 497. They are in high repute.

[6] Vols. 1–3, by James Webb and Thomas H. Duval; 4–10, by Oliver C. Hartley; 11–20, by O. C. and R. K. Hartley; 21–24, by George F. Moore and Richard S. Walker.

[7] This volume consists of a selection of criminal cases decided by the late Judge

Thompson's Reports; *Thompson;* Nova Scotia; 1 vol.; 1856-1859.[1]
Tidd's Practice; *Tidd Pr.;* 2 vols.; Eng. & Am. notes.[2]
Tiffany & Bullard's Trusts and Trustees; *Tif. & B. Tr.;* 1 vol.; Am. 1862.

Thacher, in the former Municipal Court of the City of Boston. It was compiled by Horatio Woodman. I presume Mr. Woodman's part was well done. And the judge was a man possessing considerable legal ability. But the Municipal Court was a jury court, held by the single judge, and from all his decisions exceptions or an appeal lay to the Supreme Judicial Court. Under the circumstances, therefore, it was not to be expected that these decisions should rank as legal authority in Massachusetts, and they do not. Still many of them are interesting and in a certain sense valuable. I have referred to some of them in my works on the Criminal Law and Criminal Procedure; but, in writing a law treatise, an author who exercises a judgment of his own is at liberty to support his positions by any citations he may choose to make; that is, I suppose he is; at all events, it is a liberty which I, for one, always take. When an author is looking for semi-authority or for legal argument to support a particular legal truth, there cannot, in reason, be any exact line drawn for him, beyond which his steps are never permitted to roam. And see ante, § 188.

[1] For another volume by the same reporter, see ante, § 582, *Law Reports.*

[2] The full title is as follows: "The Practice of the Courts of King's Bench and Common Pleas in Personal Actions and Ejectment; to which are added the Law and Practice of Extents: and the Rules of Court, and Modern Decisions, in the Exchequer of Pleas." Mr. Hoffman says: "Mr. Tidd's truly admirable work appeared, London, 1803; the *ninth* edition in 1830, and the first American edition in 1807." 1 Hoffman Leg. Study, 2d ed. 374. The fourth American from the ninth London edition was published at Philadelphia in 1856. And I think there has been no later edition either in the United States or in England. Mr. Warren, writing in 1845, says: "Tidd's Practice, for many years justly considered 'the polar star of the practitioner,' and deserving of that character, from its comprehensiveness and scientific character, still continues to be cited in the courts, not merely as a standard text book, but almost as an *authority*, on account of its unrivalled accuracy. It cannot now, however, be relied on by students and practitioners, in consequence of the vast alterations in the law effected during the last twelve or fifteen years. On every portion of still existing law, however, contained in it, this work continues to be a high authority." Warren Law Studies, 2d ed. 752. Very few English books have had wider popularity, or been more extensively used, than this. In England it is now superseded by other works, which keep pace with the changes effected by legislation and by rules of court. Our own country is so cut up into States, each having its own peculiar practice, that we have not had a general book of American law practice, and it is impossible any such book should be written. There are some general principles which run, and must run, through every system of legal practice; and an author, sufficiently skilful, might do an excellent service by culling out these, and presenting them, detached from local rules and local usages, for use everywhere. But until this is done, we cannot expect to have a more useful work, of a general sort, relating to this subject, than this old book by Mr. Tidd. It can hardly be said to be a scientific book; yet, on the other hand, it is not exactly a digest. There is a science in law practice, but it has not yet been developed by any writer.

Tomlins's Law Dictionary; *Toml. Law Dict.*[1]

Tomlins's Repertorium Juridicum.[2]

Train & Heard's Precedents of Indictments; *Train & Heard Preced.*; 1 vol.; Am. 1855.

Treadway's Constitutional Court Reports (Treadway was only the publisher); *Tread.*; S.C.; 2 vols.; 1812–1816.[3]

Turner & Russell's Reports; *Turn. & R.* (or *T. & R.*); Eng. Ch.; 1 vol.; 1822–1824.

Tyler's Reports; *Tyler*; Vt.; 2 vols.; 1800–1803.

* Tyng's Reports. Same as 2–17 *Massachusetts.*

Tyrwhitt's Reports; *Tyrw.*; Eng. Ex.; 5 vols.; 1830–1835.

Tyrwhitt & Granger's Reports; *Tyrw. & G.*; Eng. Ex.; 1 vol.; 1835, 1836.

§ 599. T. — Further Abbreviations.

Temp. (or * *T.*). Tempore, in the time of.

T. B. Monr. T. B. Monroe's Reports. See *Monroe.*

T. Jones. Sir Thomas Jones's Reports. See *Jones.*

T. Raym. Sir Thomas Raymond's Reports. See *Raymond.*

T. U. P. Charl. T. U. P. Charlton's Reports. See *Charlton.*

[1] See ante, § 578, *Jacob*, note.

[2] This is not a book to be studied or cited. Its title is: "Repertorium Juridicum; a General Index to all the Cases and Pleadings in Law and Equity contained in all the Reports, Year-Books, &c., hitherto published. Part the First." The proposed second part was never published. The work, as we thus have it, consists of an alphabetical index to all the cases to be found in the old books of English reports, with the subject stated to which each relates, and the book and page, or the several books and pages, where each is reported. And since many of the old cases are reported by more than one reporter, as well as for some other reasons, such a book, covering this old ground, is much more essential than would be a book, like it, embracing the modern reports. I can say, from experience with it, that it is very useful. It was a mere improved and corrected edition of a prior work by some other author, bringing the matter down to the time of publication. It was published in a large folio volume, London, 1786; reprinted in 8vo at Dublin, 1788. The Dublin edition is bound sometimes in one volume and sometimes in two. The name of Tomlins is attached to several other law books besides this and the Dictionary, but none of them are of much note now.

[3] See ante, § 500, 564, *Constitutional Reports*, note.

§ 600. U. — Principal Collection.

Upper Canada Chamber Reports, by Robinson; *U.C. Cham.;* U.C.; 2 vols.; 1848–1852.

Upper Canada Common Pleas Reports, by Jones; *U.C. C. P.;* U.C.; 1850 to the present time.

Upper Canada Queen's Bench Reports; *U.C. Q.B;* U.C.; 1843 to the present time.

Upper Canada Queen's Bench and Practice Reports, Old Series; *U.C. O.S.*; U.C.; 6 vols.; 1831–1843.

§ 601. U. — Further Abbreviation.

U.K. United Kingdom.

§ 602. V. — Principal Collection.

Van Ness's Reports; *Van Ness;* U.S. Dist. of N.Y.; 1 vol.; 1813.[1]

Vaughan's Reports; *Vaugh.;* Eng. C.P.; 1 vol.; 1665–1674.[2]

* Veazey's Reports. Same as 36 et seq. *Vermont.*

Ventris's Reports; *Vent.;* Eng. K.B., C.P., and Ch.; 2 parts; 1668–1691.[3]

Vermont Reports; *Vt.;* 1826 to the present time.[4]

[1] The title is: "Reports of two Cases determined in the Prize Court for the New York District."

[2] "The 'Reports' of Sir John Vaughan consist of 'select and important cases,' very fully and ably taken. The first edition was published anno 1677; and the second, in 1706, by his son Edward Vaughan, Esq., with references; to which is added a Tract concerning Process out of the Courts at Westminster into Wales." Bridgman Leg. Bib. 345. See, more particularly, Wallace Reporters, 3d ed. 210. And see 1 Kent Com. 486.

[3] "Printed, first, in 1696; secondly, in 1701; thirdly, with references by Serjeant Richardson, in 1716; and, fourthly, with additional references, in 1726; folio." Bridgman Leg. Bib. 346. I have not before me any expressions of opinion concerning these reports, but I have always been of the impression that they are exceedingly well done, and in every way a valuable collection.

[4] Vols. 1–9, by the Judges; 10, 11, by G. B. Shaw; 12–14, by William Weston; 15, by William Slade; 16–23, by Peter T. Washburn; 24–26, by John F. Deane; 27–29, by Charles L. Williams (sometimes cited under the name of the reporter); 30–35, by William G. Shaw; 36–39, by Wheelock G. Veazey. The appearance of the three volumes by Williams would indicate that they should be cited by his name; but, in Vermont, I believe they are uniformly cited 27, 28, 29 *Vt.;* they should be so, therefore, elsewhere.

Vernon's Reports; *Vern.*; Eng. Ch.; 2 vols.; 1680–1720.[1]

Vernon & Scriven's Reports; *Vern. & S.* (or *Vern. & Scriv.*); Irish, K.B. & Ir. H. of L.; 1 vol.; 1786–1788.

Vesey, Sen.'s Reports; *Ves. Sen.* (or *Ves.*); Eng. Ch.; 2 vols.; 1746–1755.[2]

Vesey, Jr.'s Reports; *Ves.* [the 1st 2 vols. are cited *Ves. Jr.*]; Eng. Ch.; 20 vols.; 1789–1817.[3]

Vesey & Beames's Reports; *Ves. & B.*; Eng. Ch.; 3 vols.; 1812–1814.

Viner's Abridgment; *Vin. Abr.*; 2d ed. 24 vols. with sup. of 6 vols.; Eng.[4]

Virginia Cases; *Va. Cas.*; Va. criminal; 2 vols.; 1789–1826.

§ 603. V. — Further Abbreviations.

V. Written small, thus *v.*, versus, or against. Formerly the abbreviation was often *vs.*, but it is not generally so written now.[5]

Vict. The reign of Queen Victoria.

[1] These reports were originally published in 1726 and 1728, by order of the Court of Chancery, to disentangle some litigation respecting the manuscript. As they appeared in this edition, they were somewhat complained of as inaccurate. They were afterward edited by John Raithby, a very careful person, as Bridgman says, "with great labor. And as he has taken the pains to examine all the cases with the register's book, they cannot fail to be an acceptable offering to the profession. . . . Printed in three parts, though consisting only of two volumes, octavo, and it is dated in the years 1806 and 1807." Bridgman Leg. Bib. 348. This edition of Vernon was reprinted in England in 1828; and, in the United States, Brookfield, 1829. Chancellor Kent, with this edition before him, observes: "Vernon's Reports are the best of all the old reports in chancery." 1 Kent Com. 492.

[2] See ante, § 562, *Belt.* This name is sometimes spelled *Vezey.* "Much the best edition of these reports is by Mr. Belt, in three volumes, octavo, 1818, including a supplement in 1825. . . . This edition, which has been reprinted in the United States, has quite superseded the older ones of 1771, 1773, 2 vols. fol., and 1788, 2 vols. 8vo." Wallace Reporters, 3d ed. 322, 323. The reports themselves, in their present improved form, stand, on the whole, excellently well.

[3] These reports have an excellent standing. There are two American editions. The best edition, published anywhere, is the American one which was edited by Charles Sumner and J. C. Perkins, — Mr. Sumner being the gentleman who became afterward, and still is, the distinguished Senator from Massachusetts. And see 1 Kent Com. 495.

[4] See ante, § 220.

[5] See ante, § 511.

§ 604. W. — Principal Collection.

Waddilove's Digest of Cases in the Ecclesiastical Courts; *Wadd. Dig.;* 1 vol.; Eng. 1849.

Walker's Chancery Reports; *Walk. Mich.;* Mich.; 1 vol.; 1842–1845.

Walker's Reports; *Walk. Missis.;* Missis.; 1 vol.; 1818–1832.

Walker's Introduction to American Law; *Walk. Int.;* 1 vol.; Am. Con.

* Wallace's Reports. Same as *Philadelphia Reports.*

Wallace's Reports; *Wal.;* U.S. Sup. Ct.; 1863 to the present time.

Wallace's Reports; *Wal. C. C.* (or *Wallace*); U.S. 3d Circuit; 1 vol.; 1801.

Wallace's Reports; *Wal. Jr.* (or *Wallace Jr.*); U.S. 3d Circuit; 2 vols.; 1842–1853.[1]

* Warden's Reports. Same as 2, 4 *Ohio State.*

* Warden & Smith's Reports. Same as 3 *Ohio State.*

Ware's Reports; *Ware;* U.S. Dist. of Me.; 1822–1839.[2]

Warren's Law Studies; *Warren Law Studies;* 1 vol.; Eng. & Am. reprint. Con.[3]

Washburn on Real Property; *Washb. Real Prop.;* 2 vols.; Am. Con.

Washburn on Easements; *Washb. Easm.;* 1 vol.; Am. Con.

* Washburn's Reports. Same as 16–23 *Vermont.*

Washington's Circuit Court Reports; *Wash. C. C.;* U.S. 3d Circuit; 4 vols.; 1803–1827.

Washington's Reports; *Wash. Va.;* Va.; 2 vols.; 1790–1796.

* Waterman's Archbold. Same as *Archbold's New Criminal Procedure.*[4]

Watts's Reports; *Watts;* Pa.; 10 vols.; 1832–1840.

Watts & Sergeant's Reports; *Watts & S.;* Pa.; 9 vols.; 1841–1845.

* Webb & Duval's Reports. Same as 1–3 *Texas.*

* Welsby, Hurlstone, & Gordon's Reports. Same as 1–9 *Exchequer.*

Wendell's Reports; *Wend.;* N.Y.; 26 vols.; 1828–1841.

West's Reports; *West;* Eng. Ch.; 1 vol.; 1736–1740.[5]

[1] The reporter, in his Preface, requests that these volumes be cited as "Wallace Junior" to distinguish them from the prior Circuit Court Reports by J. B. Wallace.

[2] The second edition contains also cases in 1854 and 1855.

[3] See ante, § 382, 383.

[4] See ante, § 560, *Archbold,* note.

[5] "This book was first published in 1827, from original manuscripts said to be by Lord Hardwicke himself. It is a compilation of cases during that period already reported in Atkyns, &c., with the addition of some from Lord Hardwicke's manuscripts, and improvements to almost all from the same source and the Register's book. It was designed to be only the beginning of a work that, upon the same plan, should comprehend the whole time of Lord Hardwicke's presiding in Chancery. It is to be lamented that the work was not continued; for as far as it goes, it

West's House of Lords Cases; *West H. L. Cas.;* Eng.; 1 vol.; 1839–1841.

Western Law Journal; *West. Law Jour.;* a monthly, pub. Cincinnati; 10 vols.; 1843–1853.

* Weston's Reports. Same as 12–14 *Vermont.*

Wharton's Criminal Law; *Whart. Crim. Law;* 2 vols.; Am. Con.[1]

Wharton's Reports; *Whart.;* Pa.; 6 vols.; 1835–1841.

Wheaton's Reports; *Wheat.;* U.S. Sup. Court; 12 vols.; 1816–1827.

Wheeler's Criminal Cases; *Wheeler Crim. Cas.;* N.Y.; 3 vols.; 1804–1825.[2]

White & Tudor's Leading Cases in Equity; *White & T. Lead. Cas.;* 3 vols.; Eng. & Am. notes. Con.

* Whittlesey's Reports. Same as 31 et seq. *Missouri.*

Wightwick's Reports; *Wightw.;* Eng. Ex.; 1 vol.; 1810, 1811.

Willes's Reports; *Willes;* Eng.; 1 vol.; 1737–1760.[3]

* Williams's Reports. Same as 27–29 *Vermont.*

* Williams's Reports. Same as 1 *Massachusetts.*

* Williams. See *Peere Williams.*

Willmore, Wollaston, & Davison's Reports; *W. W. & D.;* Eng. Q.B.; 1 vol.; 1837.

Willmore, Wollaston, & Hodges's Reports; *W. W. & H.;* Eng. Q.B.; 1 vol.; 1838.

is of great value, owing principally to its superior authenticity." Wallace Reporters, 3d ed. 319.

[1] In the first four editions it was in one volume; in the fifth, it is in two volumes; and now I see a sixth edition advertised as in preparation, to be in three volumes. It was formerly cited by the page. Afterward the paragraphs were numbered as sections, since which it is cited by the section. The pagings and the numberings of the sections differ in the different editions; therefore every reference to this book should mention the edition. And see 1 Bishop Crim. Proced. § 1092. Mr. Wharton is the author also of a treatise on the "Law of Homicide," of "Precedents of Indictments and Pleas," and the compiler of a volume entitled "State Trials of the United States." Wharton & Stillé produced jointly a work on "Medical Jurisprudence."

[2] "The first volume contains principally reports of criminal trials in the courts of the city of New York. The second and third volumes contain cases from various courts throughout the Union. A great many of the New York cases are jury trials only, in which no points of law were ruled." 1 Abbott New York Dig. Pref. xix. This collection is not of great value, though it contains some cases of legal interest.

[3] "These reports, though posthumous, are admitted to be highly authoritative. They appear to have been prepared by the Chief Justice [Willes] himself, and were carefully revised by Mr. Durnford, their reputable editor. Willes and Wilson are probably the most authoritative reports of the reign of Geo. II. . . . Editions: fol. 1799; also, in 8vo, 1800; and in the same form in this country, 1802." Wallace Reporters, 3d ed. 273, 274. I remember to have seen this book lettered on the back "Durnford's Reports." I am not quite certain whether it is ever so cited in our law books. It should be both lettered and cited as "Willes's Reports."

Wilmot's Notes of Opinions and Judgments; *Wilmot;* Eng.; 1 vol.; 1757–1770.

Wilson's Chancery Reports; *Wils. Ch.;* Eng. Ch.; 2 vols.; 1818, 1819.[1]

Wilson's Exchequer Reports; *Wils. Ex.;* Eng. Ex.; 1 vol.; 1817.[2]

* Wilson's Reports. Same as 1 *California.*

Wilson's Reports; *Wils.;* Eng.; 3 parts; 1748–1775.[3]

* Wilson & Courtenay's Reports. Same as 6, 7 *Wilson & Shaw.*

Wilson & Shaw's Appeal Cases; *Wils. & S.* (or * *W. & S.*); H. of L. on Ap. from Scotland; 7 vols.; 1825–1834.[4]

Winch's Reports; *Winch;* Eng.; 1 vol.; 1621–1625.[5]

Wisconsin Reports; *Wis.;* 1853 to the present time.[6]

* Withrow's Reports. Same as 9–20 *Iowa.*

Woodbury & Minot's Reports; *Woodb. & M.;* U.S. 1st Circuit; 3 vols.; 1845–1847.

* Woodman's Reports. Same as *Thacher.*

Wright's Reports; *Wright;* Ohio; 1 vol.; 1831–1834.[7]

Wright's Pennsylvania State Reports; *Wright Pa.;* Pa.; 14 vols.; 1860–1865.[8]

* Wyatt's Reports. Same as *Practical Register in Chancery.*

Wythe's Reports; *Wythe;* Va. Ch.; 1 vol.; 1788–1799.

[1] Neither of these volumes was ever finished. Three parts were published of vol. 1, and one part of vol. 2.

[2] This is an unfinished volume, consisting of 138 pages.

[3] These reports hold an excellent position in professional estimation. And see ante, *Willes*, note. They "have passed through three editions; the two first were printed in three parts folio, in 1770 and 1775, and bound in two volumes. The third was printed in 1779, in three volumes royal octavo, with additional notes of the points determined, references to modern cases, and improved tables of the principal matters, and of the names of the cases." Bridgman Leg. Bib. 364. There is an 8vo Dublin edition, which, I think, is a reprint of the one last mentioned.

[4] The abbreviation *W. & S.* is not good: because it might be understood by readers to stand for "Watts & Sergeant." Though these volumes are all generally cited as the reports of Wilson & Shaw, yet, according to the title-page, vol. 6 is by these gentlemen jointly with Maclean and Courtenay; and vol. 7 is by Wilson, Shaw & Maclean. In fact, however, a part of vol. 6 was originally published under the names of Wilson & Courtenay alone; from which circumstance this vol. 6 and vol. 7 are sometimes cited and known as 1, 2 Wilson & Courtenay.

[5] Published in 1657 in an English translation from an unpublished French original. The reputation of the book is fairly good. And see Wallace Reporters, 3d ed. 189.

[6] Vols. 1–11, by Abram D. Smith; 12–15, by Philip L. Spooner; 16–20, by O. M. Conover.

[7] These reports are not of decisions by the highest court in Ohio; consequently they are not, in the strictest sense, legal authority in that State.

[8] Cited also as 37–50 *Pennsylvania State.* See ante, § 590.

§ 605. W. — Further Abbreviations.

W. Bl. William Blackstone's Reports. See *Blackstone.*
W. Jones. Sir Wm. Jones's Reports. See *Jones.*
W. Kel. W. Kelynge's Reports. See *Kelynge.*
Westm. (or *W.*) Westminster.
Will. (or *W.*) The reign of King William.

§ 606. Y. — Principal Collection.

Yates's Select Cases; *Yates Sel. Cas.;* N.Y.; 1 vol.[1]
Year Books.[2]
Yeates's Reports; *Yeates;* Pa.; 4 vols.; 1791–1808.
Yelverton's Reports; *Yelv.;* Eng. K.B.; 1603–1613.[3]
Yerger's Reports; *Yerg.;* Tenn.; 10 vols.; 1818–1837.
Younge's Reports; *Younge;* Eng. Ex. in Eq.; 1 vol.; 1830–1832.
Younge & Collyer's Reports; *Y. & Col. Ex.* (or *Y. & Col.*); Eng. Ex. in Eq.; 4 vols.; 1834–1841.
Younge & Collyer's Chancery Cases; *Y. & Col. C. C.;* Eng. Ch.; 2 vols.; 1841–1844.
Younge & Jervis's Reports; *Y. & J.;* Eng. Ex.; 3 vols.; 1826–1830.

[1] The following is the full title: "Select Cases adjudged in the Courts of the State of New York. Vol. I. Containing the case of John V. N. Yates, and the case of the Journeymen Cordwainers of the city of New York. New York: Printed and published by Isaac Riley. 1811." In Abbott's New York Digest, there is a list of the New York Reports, and the following note concerning this book: "The volume known as 'Yates' Cases,' sometimes enumerated in lists of New York Reports, is not specified in the above table, for the reason that it contains only two cases, one of which, the case of John V. N. Yates, is reported in Johnson's Reports; the other, the case of the Journeyman Cordwainers, is reported in Wheeler's Criminal Cases." 1 Abbott Dig. Pref. xiii. note.

[2] See, concerning the Year Books, ante, § 146–148, 218, 412, 414; 3 Co. Pref. iii. As to the method of citing them, see ante, § 514, 516, 561, *Ass.* and note.

[3] See 1 Kent Com. 485. These are among the most valuable of the old English reports. They were "originally published in French, by Sir W. Wylde, annis 1661 and 1674, and were afterwards carefully translated into English, and published anno 1735, folio." Bridgman Leg. Bib. 380. There was also a fourth edition in English, published in 1792. But the best edition, beyond comparison, is an American one, edited by Judge Metcalf while at the bar, and published at Andover, 1820.

§ 607. Y. — Further Abbreviation.

* *Y. B.* Year Books.[1]

§ 608. Z. — Principal Collection.

Zabriskie's Reports; *Zab.*; N.J.; 4 vols.; 1847–1855.

[1] See ante, § 606, *Year Books*, note.

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Note. — In this Index, when the plaintiff is the King, the Queen (Rex or Reg.), the State, the Commonwealth, the People, or the like, the name of the defendant is put first. In all other instances, the plaintiff's name stands first.

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